OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 7, 2016

PUBLIC ACCESS OPINION 16-009
(Requests for Review 2016 PAC 43168, 43184, 43186, 43193 and 43370)

FREEDOM OF INFORMATION ACT:
Disclosure of Certain Information in a Criminal Complaint Filed by a Public Figure

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Mr. Nathan Lurz
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Ms. Natasha Korecki
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Ms. Enza Petrarca
Village Attorney
Village of Downers Grove
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Dear Ms. Vinicky, Mr. O'Connor, Mr. Fusco, Mr. Lurz, Ms. Korecki, and Ms. Petrarca:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f)
of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons
discussed below, this office concludes that, although the Village of Downers Grove (Village)
provided copies of some records and substantial additional information in a supplemental
response and properly applied exemptions to portions of various records that it continues to
withhold, it violated the requirements of FOIA by improperly redacting and withholding other information related to a criminal complaint filed by a then-public official.

**BACKGROUND**

This binding opinion addresses five FOIA requests seeking the same or similar records, each of which the Village denied in part asserting the same bases. Because the Requests for Review present common issues, this office has consolidated these files for determination in this binding opinion.

**2016 PAC 43168**

On July 25, 2016, Ms. Sarah Mueller submitted a FOIA request to the Village seeking "[a] copy of all police reports filed by Ron Sandack of Downers Grove between July 1, 2016 and July 24, 2016."¹ On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(vii) (West 2015 Supp.). The response also stated that "[i]nvestigative supplements have not been completed as of the date of this response and that "[e]videntiary documents are denied" pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA."² On July 26, 2016, Ms. Mueller submitted a Request for Review, on behalf of National Public Radio (NPR) Illinois, disputing the redaction of the information in the narrative of the complaint, the type of incident, and the offense classification.³

On August 3, 2016, the Public Access Bureau sent a copy of the Request for Review to the Village's Police Department and asked it to provide unredacted copies of the police report at issue for this office's confidential review together with a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information redacted from the complaint as well as to the redactions of the

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²Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Sarah Mueller (July 26, 2016).

³E-mail from Sarah Mueller, Reporter, NPR Illinois, to Public Access (July 26, 2016). Ms. Mueller also questioned why she was required to submit photo identification in order to file a FOIA request with the Village. The Public Access Counselor's authority under FOIA is limited to reviewing denials of FOIA requests. See 5 ILCS 140/9.5(a) (West 2014). Because Ms. Mueller did not refuse to provide photo identification and because the Village did not deny her request for failing to do so, this office is unable to review that issue. However, this office notes that no provision of FOIA authorizes a public body to require a requester to provide photo identification as a prerequisite to filing a FOIA request.
type of incident and the offense classification.⁴ On August 5, 2016, the Village Attorney furnished those materials to the Public Access Bureau in a consolidated response to the Requests for Review in 2016 PAC 43184, 43186, and 43193 (Consolidated Response).⁵ On the same day, this office forwarded a copy of the non-confidential portions of the Village's Consolidated Response to Ms. Mueller;⁶ she did not reply.

On September 8, 2016, this office received from the Village a supplemental response in which it asserted that the information redacted from the incident report should remain confidential based on Mr. Sandack's rights as a crime victim under article I, sections 8.1(a)(1) and 8.1(a)(2) of the Illinois Constitution of 1970 (Supplemental Response to PAC).⁷ On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC) to Ms. Mueller;⁸ she did not reply.

2016 PAC 43184

On July 25, 2016, Mr. John O'Connor, on behalf of the Associated Press, submitted a FOIA request to the Village's Police Department seeking "a copy of any report filed by Ron Sandack or involving alleged cyber-security threats or fraudulent impersonation using social media since July 1, 2016."⁹ On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also indicated that investigative supplements had not been completed, and that evidentiary documents were withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.¹⁰ On July 26,


2016, Mr. O'Connor submitted a Request for Review asserting that the report was excessively redacted and requested that this office direct the "Downers Grove Police Department to disclose all relevant and public information under FOIA."\(^{11}\)

On August 5, 2016, this office forwarded a copy of the non-confidential portions of the Village's Consolidated Response to Mr. O'Connor.\(^{12}\) On August 9, 2016, Mr. O'Connor submitted a reply in which he disputed the redaction of information in several specific sections of the incident report.\(^{13}\) On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Mr. O'Connor.\(^{14}\) He did not reply to the Supplemental Response to PAC.

**2016 PAC 43186**

On July 26, 2016, Mr. Chris Fusco, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Village "seeking to review and/or obtain copies of any police reports, audio and/or video recordings, and/or any other records involving incidents since Jan. 1, 2016 — including but not limited to cyberhacking — involving state Rep. Ronald Sandack, whose home and office are in Downers Grove."\(^{15}\) On the same day, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA; the response also stated that investigative supplements had not been completed, and denied evidentiary documents under sections 7(1)(c) and 7(1)(d)(vii) of FOIA.\(^{16}\) On July 27, 2016, Mr. Fusco submitted a Request for Review in which he questioned whether the information that was redacted and withheld is exempt from disclosure under FOIA.\(^{17}\)


\(^{15}\)E-mail from Chris Fusco, Staff Reporter, Investigations/Projects, *Chicago Sun-Times*, to FOIA Officer, Village of Downers Grove (July 26, 2016).

\(^{16}\)Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Chris Fusco, [*Chicago Sun-Times* (July 26, 2016).

\(^{17}\)E-mail from Chris Fusco, *Chicago Sun-Times*, to Public Access Counselor, Illinois Attorney General (July 27, 2016).
On August 3, 2016, the Public Access Bureau sent a copy of the Request for Review to the Village's Police Department and asked it to provide unredacted copies of the records that were redacted and withheld for this office's confidential review together with a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions. This office also asked the Village's Police Department to clarify its response the reasons for withholding investigative supplements that had not been completed at the time of the response to the FOIA request.\(^{18}\)

On August 5, 2016, this office forwarded a copy of the non-confidential portions of the Village's response to Mr. Fusco.\(^{19}\) On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Mr. Fusco.\(^{20}\) He did not reply to either response.

**2016 PAC 43193**

On July 26, 2016, Mr. Nathan Lurz, on behalf of Shaw Media, submitted a FOIA request to the Village seeking copies of "[a]ny police reports involving former IL State Rep. Ron Sandack filed in the past six months, including any legally releasable ongoing cases[.]"\(^{21}\) On July 27, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.\(^{22}\) On July 27, 2016, Mr. Lurz submitted a Request for Review questioning whether the information redacted from the incident report is exempt from disclosure under FOIA.\(^{23}\)

On August 3, 2016, the Public Access Bureau sent a copy of the Request for

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\(^{19}\)Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Chris Fusco, Staff Reporter, Chicago Sun-Times (August 5, 2016).

\(^{20}\)Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Chris Fusco, Staff Reporter, Chicago Sun-Times (September 8, 2016).

\(^{21}\)Village of Downers Grove FOIA 1-Request form submitted by Nathan Lurz (July 26, 2016).

\(^{22}\)Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Nathan Lurz, Suburban Life (July 27, 2016).

\(^{23}\)E-mail from Nathan Lurz to Public Access (July 27, 2016).
Review to the Village's Police Department and asked it to provide an unredacted copy of the police report together with a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information that was redacted.\(^24\)

On August 5, 2016, this office forwarded a copy of the non-confidential portions of the Consolidated Response to Mr. Lurz.\(^25\) On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Mr. Lurz.\(^26\) He did not reply to either response.

**2016 PAC 43370**

On July 25, 2016, Ms. Natasha Korecki, on behalf of Politico Illinois, submitted a FOIA request to the Village seeking a "copy or copies of any police report filed by Ronald Sandack (state Representative) from March[ ] 1, 2016 to the present."\(^27\) On July 26, 2016, the Village's Police Department responded by providing a copy of the report but redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.\(^28\) On August 7, 2016, Ms. Korecki submitted a Request for Review questioning whether the information that was redacted from the report is exempt from disclosure under FOIA.\(^29\)

On August 11, 2016, this office sent a copy of the Request for Review to the Village's Police Department and asked it to provide a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the


\(^{26}\) Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Nathan Lurz, Reporter, Downers Grove and DuPage County, Shaw Media (September 8, 2016).

\(^{27}\) E-mail from Natasha Korecki, POLITICO Illinois Playbook writer/Political reporter, to FOIA Officer (July 25, 2016).

\(^{28}\) Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Natasha Korecki - Politico (July 26, 2016).

\(^{29}\) E-mail from Natasha Korecki, POLITICO Illinois Playbook writer/Political reporter to Appeals officer (August 7, 2016).
information that was redacted from the report. On August 12, 2016, an Assistant Village Attorney asked an Assistant Attorney General in the Public Access Bureau to send Ms. Korecki a copy of the non-confidential portions of the Village's Consolidated Response that had previously been provided to this office with regard to the other Requests for Review. On August 12, 2016, this office sent a copy of that response to Ms. Korecki. On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Ms. Korecki. She did not reply to either response.

**Supplemental Response to FOIA Requests**

On September 16, 2016, the Village issued a supplemental response (Supplemental Response) to each requester in which it disclosed some portions of the records that had previously been denied and furnished additional records that were generated or obtained subsequent to its initial response. The Supplemental Response, however, indicated that other portions of the records were still being redacted or withheld pursuant to sections 7(1)(b) and 7(1)(c) as well as section 7(1)(d)(v) (5 ILCS 140/7(1)(d)(v)) (West 2015 Supp.). In addition, the response stated that "some records are being denied pursuant to a court order." 

This office then received correspondence from Mr. O'Connor, Mr. Fusco and Ms. Tina Sfondeles, Mr. Lurz, and Ms. Korecki, indicating that they continued to seek review of the information that had been redacted and withheld in the Supplemental Response.

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32Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Natasha Korecki, POLITICO Illinois, Playbook writer/Political reporter (September 8, 2016).

33Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to "Requester" (September 16, 2016).

34E-mail from John O'Connor, AP, to Steve Silverman (September 16, 2016).

35E-mail from Tina Sfondeles and Chris Fusco, Chicago Sun-Times, to Public Access Counselor, Illinois Attorney General (September 19, 2016).

36E-mail from Nathan Lurz, Reporter – Downers Grove and DuPage County, Suburban Life Newspaper (September 20, 2016).

37E-mail from Natasha Korecki, POLITICO Illinois Playbook writer/Political reporter, to Mary Jo [Vail] (September 20, 2016).
Ms. Amanda Vinicky, the Springfield Bureau Chief of NPR Illinois, advised the same in a telephone conversation with the Public Access Counselor. Therefore, on September 22, 2016, this office sent a letter to the Village and asked it to provide a detailed explanation of the applicability of sections 7(1)(b), 7(1)(c), 7(1)(d)(v) and the court order to the information that continued to be redacted and withheld, adding that the Village could incorporate by reference any portions of its previous responses to this office which remained relevant. The letter also asked the Village to furnish copies of any responsive records that were not previously provided for this office’s confidential review.

On September 28, 2016, the Village provided a second supplemental response (Second Supplemental Response to PAC) together with the additional records that this office had requested. The response indicated that the Village incorporated the arguments set forth in its previous responses to this office dated August 5, 2016, and September 8, 2016. On September 30, 2016, this office sent the non-confidential portions of the Village’s response to Ms. Vinicky, Mr. O’Connor, Mr. Fusco, Mr. Lurz, and Ms. Korecki. None of the requesters replied to the Second Supplemental Response to PAC.

On September 23, 2016, pursuant to section 9.5(f) of FOIA, this office extended the time within which to issue a binding opinion by 30 business days in Requests for Review

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2016 PAC 43168, 45 2016 PAC 43184, 46 2016 PAC 43186, 47 2016 PAC 43193, 48 and 2016 PAC 43370. 49

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014). Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2015 Supp.)) further provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure * * * but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copy." (Emphasis added.)

As an initial matter, the additional information disclosed in the Village's September 16, 2016, Supplemental Response to the requesters which had been redacted or withheld in the Village's initial response resolves the allegations that those portions of the records were improperly denied. See Duncan Publishing, Inc. v. City of Chicago, 304 Ill. App. 3d 778, 782 (1st Dist. 1999) ("Once an agency produces all the records related to a plaintiff's


request, the merits of a plaintiff's claim for relief, in the form of production of information, becomes moot.") Thus, our determination in this matter is limited to the information that the Village still claims is exempt from disclosure after issuing its Supplemental Response.

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2015 Supp.)) defines "private information" as:

[Unique identifiers], including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added.)

The Village's Second Supplemental Response to PAC stated that the Village redacted Mr. Sandack's "home address and personal telephone number, Facebook account names, numbers and URLs, Skype usernames, and account transaction numbers[ ]" pursuant to section 7(1)(b) of FOIA. 50 In a September 7, 2016, telephone conversation with an Assistant Attorney General in the Public Access Bureau, an Assistant Village Attorney stated that Mr. Sandack's attorney confirmed for the Village that the redacted telephone number is for a cellphone that Mr. Sandack maintains for personal use.

Home addresses and personal telephone numbers constitute "private information" under the plain language of the definition of that term in section 2(c-5) of FOIA. Mr. Sandack's account identification numbers and the Uniform Resource Locators (URLs) for his Facebook page and that of another individual – which are specific website addresses –are "unique identifiers" and therefore forms of "private information" that are exempt from disclosure under section 7(1)(b). In addition, the tracking numbers for wire transfers that were redacted constitute "personal financial information," which also is defined as a form of "private information" in section 2(c-5) of FOIA. Accordingly, this office concludes that the Village has sustained its burden of demonstrating that this information is exempt from disclosure pursuant to section 7(1)(b) of FOIA.

However, Mr. Sandack's Facebook and Skype account names are akin to or derived from his legal name. Conspicuously absent from the statutory definition of "private information" is any reference to a person's name. Although names are specific to individuals (see Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 411 (1997)), they are neither confidential nor unique. To the contrary, names are "basic identification," and as the Supreme Court concluded in Lieber, "[w]here the legislature intended to exempt a person's identity from disclosure, it [has done] so explicitly." Lieber, 176 Ill. 2d at 412. By excluding names from the definition of "private information," the General Assembly clearly did not intend for names to be exempt from disclosure under section 7(1)(b) of FOIA. Accordingly, this office concludes that the Village improperly redacted Mr. Sandack's Facebook and Skype account names. The Facebook and Skype account names and other identifying information of the person with whom Mr. Sandack communicated are addressed in the analysis of section 7(1)(c) below.

Section 7(1)(c) of FOIA

Section 7(1)(c) exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2015 Supp.). A public body's assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. Chicago Journeymen Plumbers' Local Union 130 v. Dept' of Public Health, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body possessing the record to prove that standard has been met. Schessler v. Dept' of Conservation, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

The Village's Consolidated Response indicated that portions of Mr. Sandack's statement and birth date were redacted pursuant to section 7(1)(c) of FOIA. The Village's Supplemental Response to PAC also indicated that, pursuant to section 7(1)(c), the Village redacted information relating to the identities of suspects and withheld in their entireties records that Mr. Sandack provided to the police when he reported the crime, including receipts for wire

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transfers and Skype messages.\textsuperscript{52}

**Birth Date**

An individual's birth date is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information. See, e.g., *Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. § 552(b)(6) (1990)), "dates of birth... are a private matter, particularly when coupled with * * * other information" and that disclosure "would constitute a clearly unwarranted invasion of personal privacy."); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336, 346-348, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "nontrivial privacy interest" in their dates of birth under the Texas Public Information Act (see Tex. Gov't Code §§552.101, 552.102, which substantially outweighs the negligible public interest in disclosure). Accordingly, this office concludes that Mr. Sandack's birth date is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

**Mr. Sandack's Statement and the Records that he Provided to Police**

At the outset, this office notes that at the time he filed the incident report on July 14, 2016, Mr. Sandack was the State Representative serving the 81\textsuperscript{st} District in the Illinois House of Representatives. He resigned from office on July 24, 2016, "citing 'cyber security issues' that also prompted him to delete his social media accounts.\textsuperscript{54}

As a former elected official, Mr. Sandack remains a public figure. An individual's status as public figure diminishes his or her right to privacy. *Iowa Citizens for Community Improvement v. United States Dept' of Agriculture*, 256 F. Supp. 2d 946, 954 (S.D. Iowa 2002) (nominee's "privacy interest is not eliminated by the fact that he has been nominated by President Bush to serve as Undersecretary of Agriculture for Rural Development; however, his public-figure status lessens that interest."). Although a public figure's "official position" may be a relevant factor in analyzing whether disclosure of records would constitute an unwarranted invasion of personal privacy, "it does not determine, of its own accord, that the privacy interest is


\textsuperscript{53}Because Illinois' FOIA statute is based on the Federal FOIA statute, decisions construing similar provisions of the Federal Act, while not controlling, may provide helpful and relevant precedents in construing the State Act. See, e.g., *Margolis v. Director, Ill. Dep't of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).


Federal courts have identified several factors relevant in analyzing the applicability of the personal privacy provision of the Federal FOIA *exemption 7(C)* to records of criminal investigations concerning public figures such as current and former public officials. In *Citizens for Responsibility and Ethics in Washington v. United States Dep't of Justice*, 978 F. Supp. 2d 1, 8-10 (D.D.C. 2013), a Federal appellate court stated that a former United States Senator had a heightened privacy interest in such records because he had resigned from office and because he had not been criminally charged following an investigation concerning allegations that he covered up an extra-marital affair. *Citizens for Responsibility and Ethics in Washington*, 978 F. Supp. 2d at 10. The court, however, also stated that because the Senator had publicly acknowledged the existence of the investigation, his "privacy interest in a fact already known to the public is substantially diminished; all the more so because he was the person responsible for disclosing it." *Citizens for Responsibility and Ethics in Washington*, 978 F. Supp. 2d at 10; see also *Citizens for Responsibility & Ethics in Washington v. United States Dep't of Justice*, 840 F. Supp. 2d 226, 233 (D.D.C. 2012) ("One can have no privacy interest in information that is already in the public domain, especially when the person asserting his privacy is himself responsible for placing that information into the public domain."). Nonetheless, the court emphasized that the Senator "retain[ed] a cognizable privacy interest in the contents of the file. 

* * * In addition to reopening old wounds, disclosure of DOJ's investigative file could result in new revelations of misconduct, even if that misconduct did not rise to the level of a criminal violation." *Citizens for Responsibility and Ethics in Washington*, 978 F. Supp. 2d at 10; see also *Kimberlin v. Dep't of Justice*, 139 F.3d 944, 949 (D.C. Cir. 1998) (a public official who disclosed to the media that he was accused of misconduct and sanctioned "still has a privacy interest, however, in avoiding disclosure of the details of the investigation[].")

In Illinois, the resolution of a personal privacy exemption claim requires balancing the public interest in disclosure of the specific information against the involved individuals' interests in privacy. *See Gibson v. Illinois State Board of Education*, 289 Ill. App. 3d 12, 20-21 (1st Dist. 1997). This determination is made by considering and weighing four factors: 

1. the requestor's interest in disclosure,
2. the public interest in disclosure,
3. the degree of invasion of personal privacy, and
4. the availability of alternative means of obtaining

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55Exemption 7(C) of Federal FOIA (5 U.S.C. § 552(b)(7)(C) (2012)) exempts from disclosure "information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information * * * could reasonably be expected to constitute an unwarranted invasion of personal privacy.[]"
the requested information." *National Association of Criminal Defense Lawyers v. Chicago Police Dep't*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010).

Here, the requesters represent media outlets that seek to disseminate information from the records in question to the public. Therefore, their interest in the records and the public’s interest are aligned. In his Request for Review (2016 PAC 43184), Mr. O’Connor emphasized that Mr. Sandack’s "status as a public figure who voluntarily engaged in the use of social media must be taken into consideration[,]" and asserted that "there surely is information that has been improperly redacted in the name of preserving the investigation which the complainant himself has disclosed to one or more members of the news media." Mr. Sandack reportedly told Capitol Fax that "he had 'deactivated' three of his four online social media accounts after 'someone' had 'tried hacking[ ]' and that "somebody" started creating fake accounts in his name around July 4th. In all, the person or persons wound up creating a total of ten fake Facebook accounts and two fake Twitter accounts." (Emphasis in original.) Following the disclosure of additional records in the Village's Supplemental Response, Mr. Sandack issued a written statement indicating that he "was the target of an international crime ring focusing on high-profile individuals luring them to engage in inappropriate online conversations with the intent of extortion," and that he "took their bait and fell for it hook, line and sinker." There is a significant public interest in disclosure of information that relates to allegations of a crime committed against a public figure, especially one that a public official publicly acknowledged and cited as a contributing factor in his decision to resign from public office.

As to the degree of invasion of personal privacy, the Village's Consolidated Response to this office, which it incorporated by reference in its Supplemental Response to PAC, stated: "Mr. Sandack is the victim in this case. ** ** ** Nobody, public figure or not, would want any of the information being disclosed to the public." This office has considered, but is precluded from discussing in this binding opinion, additional information about the applicability

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of section 7(1)(c) that the Village provided confidentially. In his reply to the Village's Consolidated Response in 2016 PAC 43184, Mr. O'Connor stated that "[e]ven if statements by the victim include information that would constitute an invasion of personal privacy, I find it hard to fathom that the statement the victim gave police is one, long, highly personal narrative."

Lastly, there do not appear to be any alternative means for the requesters to obtain the records in question.

This office's review of the records confirms that Mr. Sandack is the victim rather than the target of the investigation documented therein. The portions of his statement that were disclosed in the Village's Supplemental Response reveal the general nature of the crime under investigation and details about how Mr. Sandack was targeted. The portions of his statement that remain redacted and the information he provided to police contain highly personal information. On one hand, Mr. Sandack's interest in privacy is heightened by the fact that he has resigned his public office and is no longer a public official. On the other hand, Mr. Sandack's privacy rights are diminished by his status as a public figure and his voluntary disclosure of discrete information about the alleged crime to the media.

Taking all of these factors into account, this office concludes that disclosure of most of the remaining redacted portions of the statement and the documentation Mr. Sandack provided to police would constitute a clearly unwarranted invasion of personal privacy. These materials contain highly personal and specific information concerning how Mr. Sandack was allegedly lured into an extortion scheme, how the extortion was carried out, and how he responded. He has not publicly disclosed this information, which is unrelated to his former public duties. There is no legitimate public interest in disclosure of these portions of the records that would outweigh Mr. Sandack's right to privacy. Accordingly, this office concludes that the Village has sustained its burden of demonstrating that this information is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

However, the Village has not sustained its burden of demonstrating by clear and convincing evidence that the amounts of money that were requested and transmitted and the receipts of those transactions would constitute an unwarranted invasion of personal privacy. Although the fact that an individual paid money in response to extortion is highly personal, that

605 ILCS 140/9.5(d) (West 2014) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

fact has already been revealed in the records disclosed to the requesters. Further, Mr. Sandack is a public figure who publicly acknowledged that he was extorted and he cited the extortion as a reason for his resignation from public office. Under these circumstances, Mr. Sandack’s right to privacy does not outweigh the legitimate public interest in disclosure of this information. Accordingly, this office concludes that the Village improperly withheld that information pursuant to section 7(1)(c) of FOIA. As discussed above, Mr. Sandack’s home address and telephone number may be properly redacted from the receipts pursuant to section 7(1)(c), and, as discussed below, information identifying the recipient of the money may be properly redacted pursuant to section 7(1)(c).

Information Relating to the Identities of Suspects

When balancing the right to privacy against the public interest in disclosure, courts have "repeatedly expressed particular concern for protecting those who have been investigated, but not charged, in connection with a crime from the public embarrassment and damage to their reputations which a disclosure of the investigative interest would cause." *Dunaway v. Webster*, 519 F. Supp. 1059, 1078 (N.D. Cal. 1981); see also *Citizens for Responsibility and Ethics in Washington v. United States Dep't of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C., 2012), quoting *American Civil Liberties Union v. United States Dep't of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011) (the right to privacy "is strongest where the individuals in question 'have been investigated but never publicly charged.'"); *Fiunara v. Higgins*, 572 F. Supp. 1093, 1108 (D. N.H. 1983) (the version of section 7(1)(c) in Federal FOIA "applies to withhold the identities of those third parties investigated for possible criminal activities, even though not subsequently charged or indicted."). Special circumstances — such as suspects who are candidates for public office rather than private citizens and allegations of illegal campaign contributions that are required to be publicly reported — are required to justify disclosure of information identifying unindicted targets of criminal investigations. *See Common Cause v. National Archives and Records Service*, 628 F.2d 179, 184 (D.C. Cir. 1980).

Although the records in question involve a public figure, Mr. Sandack was the victim rather than the target of the investigation. The records contain names (possibly aliases), Facebook and Skype account names, and other types of identifying information of suspects who appear to be private citizens. Because these individuals are suspects who have not been arrested or charged with a crime, their right to privacy outweighs any legitimate public interest in disclosure of this identifying information. Accordingly, this office concludes that the Village did not improperly redact that information pursuant to section 7(1)(c) of FOIA.

**Western Union and MoneyGram E-mails and Document Response**

The Village contends that the following information in e-mails and documents obtained from Western Union and MoneyGram in the course of the investigation is exempt from
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disclosure pursuant to section 7(1)(c): the name of an individual to whom money was sent; account numbers; the amount sent; and the names, addresses, and e-mail addresses of other victims. The Village also redacted information obtained from Western Union from the records that were provided to the requesters in the Supplemental Response.

As discussed above, the disclosure of names and other information identifying a suspect of a crime who has not been arrested or charged would constitute an unwarranted invasion of personal privacy. Likewise, information identifying any victims other than Mr. Sandack may be properly redacted pursuant to section 7(1)(c) of FOIA. McCorstin v. United States Dept of Labor, 630 F.2d 242, 245 (5th Cir. 1980) ("Exemption 7(C) is intended to protect the privacy of any person mentioned in the requested files, not only the person who is the object of the investigation."); Coleman v. F.B.I., 13 F. Supp. 2d 75, 80 (D.D.C. 1998) (disclosure of FBI documents would constitute an unwarranted invasion of personal privacy because "it is evident that release of any portion would reveal the identities of innocent third parties, witnesses or victims."). Accordingly, this office concludes that those portions of the e-mails and documents obtained from Western Union and MoneyGram are exempt from disclosure pursuant to section 7(1)(c) of FOIA.

However, once de-identified, disclosure of the remaining portions of the records would not constitute an unwarranted invasion of privacy because they would not identify any suspects or other victims. See 5 ILCS 140/7(1) (West 2015 Supp.) (when a record contains both exempt and non-exempt information, "the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying."). Therefore, these records are not exempt from disclosure in their entireties pursuant to section 7(1)(c) of FOIA. The Village's assertion that the records are exempt from disclosure pursuant to section 7(1)(d)(v) is discussed below.

Lastly, the Village appears to have withheld certain records relating to search warrants and subpoenas which reflect that unspecified information was sought from or provided by Yahoo and Microsoft, which owns Skype, pursuant to section 7(1)(c). These portions of the records do not reveal the type of information that was sought. The Village has not explained how records that merely show unspecified information was sought or produced would constitute an unwarranted invasion of personal privacy. Accordingly, the Village has not sustained its burden of demonstrating that these records are exempt from disclosure pursuant to section 7(1)(c) of FOIA.

Records Relating to Search Warrants and Subpoenas

Section 7(1)(d)(v) of FOIA

Section 7(1)(d)(v) of FOIA exempts from disclosure:
Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

* * *

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request[.]

In construing a similar provision in Federal FOIA,62 "[c]ourts have held that information pertaining to law enforcement techniques and procedures properly is withheld * * * where disclosure reasonably could lead to circumvention of laws or regulations." *Skinner v. United States Dep't of Justice, 893 F. Supp. 2d 109, 112 (D.D.C. 2012).* For example, in *Miller v. United States Dep't of Justice, 562 F.Supp. 2d 82* (D.D.C. 2008), a Federal District court held that forms used by the FBI to develop psychological profiles of criminals were properly withheld based on the agency's explanation of how suspects could use the information to circumvent the effective use of techniques for developing profiles; *see also Piper v. United States Dep't of Justice, 294 F.Supp. 2d 16, 30* (D.D.C. 2003) (even though the use of polygraph examinations is widely known, the question and answers used in the examinations themselves were within the scope of the law enforcement investigative technique exemption because disclosure could enable a criminal to "anticipate and avoid the questioning strategy of the FBI[.]") thereby doing "violence to the polygraph examination's function - the discerning of truth."); *but see American Civil Liberties Union of Southern California v. United States Citizenship and Immigration Services, 133 F. Supp. 3d 234, 243-44* (D.D.C. 2015) ("vague and conclusory" assertions with "no explanation of how the information, if released, could risk circumvention of the law, no explanation of what laws would purportedly be circumvented, and little detail regarding what law enforcement purpose is involved" are insufficient to "justify withholding records under the FOIA.").

The Village's Second Supplemental Response to PAC stated that the information redacted pursuant to section 7(1)(d)(v) reflects specialized investigative techniques that were

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62Exemption 7(E) (5 U.S.C. § 552(b)(7)(E) (2012)) applies to law enforcement records that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law[.]"
developed to assist in investigations of kidnapping cases. The Village provided additional information confidentially which asserts that disclosure of the information could harm the Village’s Police Department by revealing the nature of specific investigative techniques that are not generally known to the public. The Village also withheld certain other records relating to search warrants and subpoenas, including the e-mails and documents obtained from Western Union and MoneyGram.

Most of the records that were redacted or withheld pertaining to Facebook, Yahoo, Skype, and Microsoft concern the gathering of information through specialized investigative techniques that are not generally known. It is apparent that disclosure of this information would result in demonstrable harm to the Village's Police Department by providing insights into specialized investigative techniques that could enable perpetrators to evade detection and circumvent investigations of crimes that involve communications over the Internet, including social media. Information redacted from the records provided in the Supplemental Response concerning a suspect’s online profile image and communications with the FBI and authorities in another country also reflects specialized investigative techniques that are not generally known. Disclosure of such information could harm the Village’s Police Department by undermining its ability to investigate crimes that originate in other countries. Accordingly, this office concludes that this information was properly redacted or withheld pursuant to section 7(1)(d)(v) of FOIA. In contrast, portions of records that merely document that records were sought from companies without revealing the type of information that was sought would not reveal any unique or specialized investigative techniques and therefore were improperly withheld.

In addition, certain information redacted from the records disclosed in the Supplemental Response and the e-mails and documents obtained from Western Union and MoneyGram, which were withheld in their entireties, appear to reflect routine investigative steps rather than specialized investigative techniques. The Village's assertion that disclosure of this information will impede the ability to investigate similar crimes is largely conclusory. It is unclear how release of this information would cause demonstrable harm to the Village's Police Department. Accordingly, the Village has not sustained its burden of demonstrating by clear and convincing evidence that this information is exempt from disclosure pursuant to section 7(1)(d)(v) of FOIA.

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63The Village's response appears to assert that records obtained from Facebook, Yahoo, and Skype are exempt from disclosure only pursuant to section 7(1)(c). However, because disclosure of the content of the records would unavoidably reveal the specialized techniques used by investigators, this information is exempt from disclosure pursuant to section 7(1)(d)(v). This office declines to address the applicability of section 7(1)(c) to these records.
Illinois Constitution of 1970

The Village's September 8, 2016, Supplemental Response to this office cited the following provision of the Illinois Constitution of 1970.

(a) Crime victims, as defined by law, shall have the following rights:
   (1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.
   (2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law. Ill. Const. 1970, art. I, § 8.1(a)(1), (2).

Specifically, the Village's Supplemental Response to this office asserted: "As the victim of a crime, Mr. Sandack is afforded these protections of respect for his dignity and privacy. Accordingly, the information that was redacted in the initial incident report that was provided to the Requesters should remain redacted and private."64

The Village's reliance on this provision is misplaced. Article I, section 8.1 of the Illinois Constitution of 1970 was implemented by the Rights of Crime Victims and Witnesses Act (725 ILCS 120/1 et seq. (West 2014)). That Act provides, in relevant part:

(a) "Crime victim" or "victim" means: (1) any natural person determined by the prosecutor or the court to have suffered direct physical or psychological harm as a result of a violent crime perpetrated or attempted against that person or direct physical or psychological harm as a result of (i) a violation of Section 11-501 of the Illinois Vehicle Code or similar provision of a local ordinance or (ii) a violation of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012; (2) in the case of a crime victim who is under 18 years of age or an adult victim who is incompetent or incapacitated, both parents, legal guardians, foster parents, or a single adult representative; (3) in the case of an adult deceased victim, 2 representatives who may be the spouse, parent, child or sibling of the victim, or the representative of the victim's

estate; and (4) an immediate family member of a victim under clause (1) of this paragraph (a) chosen by the victim. If the victim is 18 years of age or over, the victim may choose any person to be the victim's representative. In no event shall the defendant or any person who aided and abetted in the commission of the crime be considered a victim, a crime victim, or a representative of the victim.

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(c) "Violent crime" means: (1) any felony in which force or threat of force was used against the victim; (2) any offense involving sexual exploitation, sexual conduct, or sexual penetration; (3) a violation of Section 11-20.1, 11-20.1B, 11-20.3, or 11-23.5 of the Criminal Code of 1961 or the Criminal Code of 2012; (4) domestic battery or stalking; (5) violation of an order of protection, a civil no contact order, or a stalking no contact order; (6) any misdemeanor which results in death or great bodily harm to the victim; or (7) any violation of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012, or Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, if the violation resulted in personal injury or death. "Violent crime" includes any action committed by a juvenile that would be a violent crime if committed by an adult. For the purposes of this paragraph, "personal injury" shall include any Type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or medical facility. A type A injury shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene. 725 ILCS 120/3(a), (c) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016.

Neither this office's review of the incident report nor any information provided by the Village indicates that Mr. Sandack is a victim of a violent crime entitled to the rights guaranteed by Article I, Section 8.1(a) of the Illinois Constitution. There is no allegations that he suffered direct physical or psychological harm as a result of a violent crime as that term is defined in section 3(e) of the Rights of Crime Victims or Witnesses Act, or a violation of section

or section 9-3 of the Criminal Code of 2012 (720 ILCS 5/9-3 (West 2014)).

Moreover, the protections guaranteed by article I, sections 8(a)(1) and 8(a)(2) of the Illinois Constitution of 1970 apply to the criminal justice process and court and other proceedings related to criminal charges that have been filed.

Complaints for Search Warrants and Search Warrants

Lastly, the Village withheld complaints for search warrants and search warrants for Skype and Facebook asserting that disclosure was precluded by court order. The Village's Second Supplemental Response to PAC explained:

The complaints and search warrants have similar language as follows: "Due to the ongoing nature of this investigation, it is hereby ordered that the complaint for search warrant, search warrant, proof of service for the search warrant and the search warrant inventory are to be impounded by the Circuit Court Clerk and not disclosed or released to the public in any manner until further order of the court." * * * It is the position of the Village that neither the complaints nor the warrants can be released at all without a court order.[67]

The Illinois Appellate Court has held that "[t]rial courts have discretion to determine whether justice requires a protective order – and what the parameters of the order should be." Willeford v. Toys "R" Us-Delaware, Inc., 385 Ill. App. 3d 265, 273 (5th Dist. 2008). The United States Supreme Court also has recognized that a public body enjoined from releasing information by court order must obey the order when responding to FOIA requests. GTE Sylvania, Inc. v. Consumers Union of the United States, Inc., 445 U.S. 375, 100 S. Ct. 1194 (1980). In that case, the Court held that a Federal agency did not violate the Federal FOIA by withholding several consumer safety reports after manufacturing groups that were identified in the reports obtained an injunction prohibiting their disclosure: "To construe the lawful obedience of an injunction issued by a federal district court with jurisdiction to enter such a decree as 'improperly' withholding documents under the Freedom of Information Act would do

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Section 11-501 of the Vehicle Code applies to "[d]riving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof."

Section 9-3 of the Criminal Code of 2012 applies to "[i]nvolutionary Manslaughter and Reckless Homicide."

violence to the common understanding of the term 'improperly' and would extend the Act well beyond the intent of Congress." *GTE Sylvania, Inc.*, 445 U.S. at 387, 100 S. Ct. at 1202.

Likewise, the Village has confirmed for this office that the judge who issued the search warrants included language in the complaints for search warrants and the warrants that specifically prohibits their disclosure. Accordingly, this office concludes that the Village did not improperly withhold those records.

**FINDINGS AND CONCLUSIONS**

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On July 25, 2016, Ms. Sarah Mueller, on behalf of NPR Illinois, submitted a FOIA request to the Village of Downers Grove seeking "[a] copy of all police reports filed by Ron Sandack of Downers Grove between July 1, 2016 and July 24, 2016."

2) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to section 7(1)(c) and 7(1)(d)(vii) of FOIA.

3) On July 26, 2016, Ms. Mueller submitted a Request for Review (2016 PAC 43168) with the Public Access Counselor and the Public Access Bureau in which she disputed the redaction of the information in the narrative of the complaint, the type of incident, and the offense classification. Ms. Mueller's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

4) On July 25, 2016, Mr. John O'Connor, on behalf of the Associated Press, submitted a FOIA request to the Village's Police Department seeking "a copy of any report filed by Ron Sandack or involving alleged cyber-security threats or fraudulent impersonation using social media since July 1, 2016."

5) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.
6) On July 26, 2016, Mr. O'Connor filed a Request for Review (2016 PAC 43184) with the Public Access Counselor and the Public Access Bureau in which he asserted that the report was excessively redacted and requested that this office "direct the Downers Grove Police Department to disclose all relevant and public information under FOIA." Mr. O'Connor's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) On July 26, 2016, Mr. Chris Fusco, on behalf of the Chicago Sun-Times, submitted a FOIA request to the Village "seeking to review and/or obtain copies of any police reports, audio and/or video recordings, and/or any other records involving incidents since Jan. 1, 2016 – including but not limited to cyberhacking – involving state Rep. Ronald Sandack, whose home and office are in Downers Grove."

8) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and denied evidentiary documents under sections 7(1)(c) and 7(1)(d)(vii) of FOIA.

9) On July 27, 2016, Mr. Fusco filed a Request for Review (2016 PAC 43186) with the Public Access Counselor and the Public Access Bureau in which he questioned whether the information that was redacted and withheld is exempt from disclosure under FOIA. Mr. Fusco's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

10) On July 26, 2016, Mr. Nathan Lurz, on behalf of Shaw Media, submitted a FOIA request to the Village of Downers Grove seeking copies of "[a]ny police reports involving former IL State Rep. Ron Sandack filed in the past six months, including any legally releasable ongoing cases."

11) On July 27, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.

12) On July 27, 2016, Mr. Lurz submitted a Request for Review (2016 PAC 43193) to the Public Access Counselor and the Public Access Bureau questioning whether the information redacted from the incident report is exempt from disclosure under FOIA. Mr. Lurz's
Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

13) On July 25, 2016, Ms. Natasha Korecki, on behalf of Politico Illinois, submitted a FOIA request to the Village seeking a "copy or copies of any police report filed by Ronald Sandack (state Representative) from March[ ] 1, 2016 to the present."

14) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of the report but redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.

15) On August 7, 2016, Ms. Korecki submitted a Request for Review (2016 PAC 43370) to the Public Access Counselor and the Public Access Bureau questioning whether the information that was redacted from the report is exempt from disclosure under FOIA. Ms. Korecki's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

16) On August 3, 2016, the Public Access Bureau forwarded copies of Requests for Review 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193 to the Village's Police Department and asked it to provide unredacted copies of the records in question for our confidential review together with detailed explanations of the factual and legal bases for the applicability of the section 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information that was redacted and withheld. This office also asked the Village's Police Department to clarify the reasons for withholding the investigative supplements that had not been completed.

17) On August 5, 2016, the Village Attorney provided the materials requested to the Public Access Bureau in a consolidated response to 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193.

18) On August 5, 2016, this office sent copies of the non-confidential portions of the Village's responses to Ms. Mueller, Mr. O'Connor, Mr. Fusco, and Mr. Lurz.

19) On August 9, 2016, Mr. O'Connor submitted a reply to the Village's response. Ms. Mueller, Mr. Fusco, and Mr. Lurz did not comment on the Village's response.

20) On August 11, 2016, this office sent a copy of Ms. Korecki's Request for Review (2016 PAC 43370) to the Village's Police Department and asked it to provide a detailed
explanation of the factual and legal bases for the applicability of the section 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information that was redacted from the report.

21) On August 12, 2016, an Assistant Village Attorney asked an Assistant Attorney General in the Public Access Bureau by e-mail to send Ms. Korecki a copy of the non-confidential portions of its consolidated response to this office in 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193.

22) On August 12, 2016, this office sent a copy of that response to Ms. Korecki; she did not submit a reply.

23) On September 8, 2016, this office received from the Village a supplemental response in which it asserted that the information redacted from the incident report should remain confidential based on Mr. Sandack's rights as a crime victim under article I, sections 8.1(a)(1) and 8.1(a)(2) of the Illinois Constitution of 1970.

24) On September 8, 2016, this office forwarded copies of the Village's supplemental response to Ms. Mueller, Mr. O'Connor, Mr. Fusco, Mr. Lurz, and Ms. Korecki; none submitted replies to that response.

25) On September 16, 2016, the Village issued a supplemental response to each requester in which it provided portions of the records that had previously been denied as well as additional records that were generated or obtained subsequent to the FOIA request. The supplemental response indicated that portions of the records were still being redacted or withheld pursuant to sections 7(1)(b) and 7(1)(c) as well as section 7(1)(d)(v). The supplemental response also cited a court order as the basis for withholding other unspecified records.

26) On September 16, 2016, this office received correspondence from Mr. O'Connor indicating that he continued to seek review of the information that was redacted and withheld in the Village's supplemental response. On September 19, 2016, Mr. Fusco submitted correspondence indicating that he also continued to seek review of the redacted and withheld information; similar correspondence was received from Mr. Lurz and Ms. Korecki on September 20, 2016. In a telephone conversation with the Public Access Counselor, Ms. Vinicky also confirmed that NPR continued to seek review of the information that was redacted and withheld.

27) On September 22, 2016, this office sent a letter to the Village and asked it to provide a detailed explanation of the applicability of sections 7(1)(b), 7(1)(c), 7(1)(d)(v) and the court order to the information that continued to be redacted and withheld, adding that the Village could incorporate by reference any portions of its previous response to this office which remained relevant. The letter also asked the Village to furnish copies of any responsive records that were not previously provided for this office's confidential review.
28) On September 23, 2016, this office extended the time to issue a binding opinion in 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193 by 30 business days, to November 7, 2016, pursuant to section 9.5 of FOIA. On the same date, this office extended the time to issue a binding opinion in 2016 PAC 43370 by 30 business days, to November 23, 2016, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue binding opinions with respect to these matters.

29) On September 28, 2016, the Village provided the additional materials that this office requested.68

30) On September 30, 2016, this office sent the non-confidential portions of the Village's written response to Ms. Vinicky, Mr. O'Connor, Mr. Fusco, Mr. Lurz, and Ms. Korecki. They did not reply to that response.

31) With respect to the specific information redacted or withheld from the documents in question, the Attorney General makes the following findings:

(a) Mr. Sandack's home addresses and personal telephone numbers constitute "private information" under the plain language of the definition of that term in section 2(c-5) of FOIA, and therefore are exempt from disclosure pursuant to section 7(1)(b) of FOIA. The tracking numbers for wire transfers which were redacted constitute "personal financial information," which also is defined as a form of "private information" in section 2(c-5) of FOIA. In addition, Mr. Sandack's Facebook account identification numbers, the Uniform Resource Locator (URL) for his Facebook page and that of another individual — which are specific website addresses — are unique identifiers within the scope of section 7(1)(b). Mr. Sandack's Facebook account names and Skype usernames, however, are not exempt from disclosure pursuant to section 7(1)(b).

(b) Mr. Sandack's birth date is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

(c) Most of the redacted portions of Mr. Sandack's statement and the documents he provided to police contain highly personal and specific information that is unrelated to Mr. Sandack's former public duties. There is no legitimate public interest in disclosure of these portions of the records that outweighs Mr. Sandack's right to privacy. Accordingly, that information is exempt from disclosure pursuant to section 7(1)(c) of FOIA. However, the Village has not demonstrated that the amounts of money that were

required or sent in response to extortion attempts and receipts of those transactions would constitute an unwarranted invasion of personal privacy. Therefore, that information is not exempt from disclosure pursuant to section 7(1)(c).

(d) Disclosure of information identifying victims of crimes and those suspected of committing a crime who have not been arrested or charged with a crime would constitute a clearly unwarranted invasion of those individuals' personal privacy. Therefore, that information is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

(e) The Village has not demonstrated how disclosure of records reflecting that unspecified information was sought from or provided by Yahoo and Microsoft, which owns Skype, would constitute an unwarranted invasion of personal privacy. Therefore that information is not exempt from disclosure pursuant to section 7(1)(c).

(f) The Village has provided clear and convincing evidence that disclosure of most of the remaining redacted or withheld records concerning Facebook, Yahoo, and Skype would cause harm to the Village's Police Department by revealing or providing insights into specialized investigative techniques that perpetrators could exploit to evade detection and circumvent investigations of crimes that involve communications over the Internet, including social media. Information redacted from the records provided in the supplemental response concerning a suspect's online profile and communications with the FBI and authorities in another country also reflects specialized investigative techniques that are not generally known. Disclosure of such information could harm the Village's Police Department by undermining its ability to investigate crimes that originate in other countries. Accordingly, this office concludes that those records are exempt from disclosure pursuant to section 7(1)(d)(v) of FOIA.

(g) The Village has not, however, sustained its burden of demonstrating that certain portions redacted from the records provided in the Village's supplemental response, as well as e-mails and records obtained from Western Union and Money Gram, are exempt from disclosure pursuant to section 7(1)(d)(v) of FOIA. As discussed above, portions of those records identifying victims of crimes and those suspected of having committed a crime who have not been arrested or charged as well as the amounts of money demanded from or sent by Mr. Sandack are exempt from disclosure pursuant to section 7(1)(c) of FOIA.

(h) Because the complaints for search warrants and the search warrants issued expressly prohibit their disclosure, the Village did not improperly withhold those records.
Therefore, it is the opinion of the Attorney General that the Village's response to the Freedom of Information Act requests submitted by Ms. Mueller, Mr. O'Connor, Mr. Fusco, Mr. Lurz, and Ms. Korecki violated the requirements of the Act, as specified in subparagraph (f) of paragraph 31 above. Accordingly, the Village is directed to take immediate and appropriate action to comply with this opinion by furnishing the requesters with the non-exempt portions of additional records responsive to their requests. This office is providing the Village Attorney under separate cover a copy of the pertinent portions of the incident report, e-mails, and records obtained from Western Union, MoneyGram, Yahoo, and Microsoft. The additional portions of records provided to the requesters in the supplemental response to the FOIA request that the Attorney General has concluded must be disclosed are highlighted in yellow. In addition, the Village should locate and disclose portions of the records reflecting Mr. Sandack's Facebook account name and Skype user names. This office has also indicated information in the records that may be properly redacted pursuant to sections 7(1)(b) and 7(1)(c), in accordance with the analysis in this opinion.

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 et seq. (West 2014). The Village may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Amanda Vinicky, John O'Connor, Chris Fusco, Nathan Lurz, and Natasha Korecki as defendants. See 5 ILCS 120/7.5 (West 2014). If it chooses to pursue review, the Village should consider whether Mr. Sandack is a necessary party under section 2-405 of the Code of Civil Procedure. 735 ILCS 5/2-405 (West 2014). A requester may also obtain judicial review of this decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois, the Village and the other requesters as defendants or co-plaintiffs. See 5 ILCS 120/7.5 (West 2014). If a requester chooses to pursue review, the requester should also consider whether Mr. Sandack is a necessary party under section 2-405 of the Code of Civil Procedure. 735 ILCS 5/2-405 (West 2014).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 1, 2015

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Menard Correctional Center
P.O. Box 1000
Menard, Illinois 62259

Ms. Laura Viano
Inmate Records Supervisor
Will County Adult Detention Facility
95 South Chicago Street
Joliet, Illinois 60436

RE: FOIA Request for Review – 2014 PAC 32361

Dear [Redacted] and Ms. Viano:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons below, we conclude that the Will County Sheriff's Office did not improperly redact records responsive to [Redacted] FOIA request.

In a letter dated August 23, 2014, [Redacted] submitted a FOIA request to the Sheriff's Office seeking booking information for inmates at the Will County Jail. Specifically, [Redacted] requested each inmate's name, sex, age, city of residence, charging description, arresting agency, and date and time of entry to the jail. On October 3, 2014, the Sheriff's Office provided responsive records that included names, booking numbers, city of residence, reason for incarceration and zip codes but redacted, without explanation, the inmates' races, street addresses, and dates of birth. In his Request for Review, [Redacted] disputed the redactions and asserted that the responsive records did not contain all the information he requested.

On December 1, 2014, this office forwarded a copy of the Request for Review to the Sheriff's Office and requested copies of the records together with a written response that identified the exemption under which the records were redacted. Following a discussion with an
Assistant Attorney General in the Public Access Bureau, a representative of the Sheriff's Office offered to provide with records containing each inmate's full address and pending charges. On January 6, 2015, the Public Access received a written response confirming that the first 50 pages of those responsive records were provided with only the inmates' races and dates of birth redacted pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2014)). did not reply to that response.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014); see also Southern Illinoisan v. Illinois Dept. of Public Health, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

Section 7(1)(c) exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." An "unwarranted invasion of personal privacy" is the "disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c) (West 2014).

In CBS, Inc. v. Partee, 198 Ill. App. 3d 936 (1st Dist. 1990), the Illinois Appellate Court considered whether the information identifying the races of individual prosecutors in the Cook County State's Attorney's Office were exempt from disclosure under a prior version of section 7(1)(c) of FOIA which applied to:

Information which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless such disclosure is consented to in writing by the individual subjects of such information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

* * *

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any
public body or applicants for such positions[.] Ill. Rev. Stat. 1987, ch. 116, par. 207(b)(ii).

In affirming the trial court's decision that the race information was not improperly withheld, the appellate court agreed that "it cannot be said, as a matter of law, that the assistant State's Attorneys, or any public employees, for that matter, have no reasonable expectation that their racial identification will not be made the subject of a public debate." Partee, 198 Ill. App. 3d at 948. The appellate court also minimized the public interest in dissemination of the information, noting that the Equal Employment Opportunity Commission already oversaw the State's Attorney's hiring and promotion practices. Partee, 198 Ill. App. 3d at 948.

Likewise, the Public Access Bureau has previously determined that an individual's race is highly personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy. Ill. Att'y Gen. PAC Req. Rev. Ltr. 18274, issued March 27, 2012. This office also has consistently determined that disclosure of a person's date of birth would constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 13417, issued May 18, 2011, at 3. Further, because has not identified any public interest in disclosure of the birth dates and race information at issue in this matter. Accordingly, we conclude that the Sheriff's Office properly redacted that information pursuant to section 7(1)(c) of FOIA.

The Public Access Bureau has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter serves to close this file.

Very truly yours,

STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau
March 5, 2014

Mr. Ralph M. Price
General Counsel
Chicago Police Department
3510 South Michigan Avenue, 5th Floor
Chicago, Illinois 60653

RE: FOIA Request for Review – 2013 PAC 23394

Dear [Redacted] and Mr. Price:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) improperly denied certain parts of [Redacted] request.

BACKGROUND

On January 15, 2013, [Redacted] sent CPD a FOIA request seeking:

documents involving People vs. [Redacted] Cook County Criminal Case Number: 05CR22105 RD#HL-520474, including, but not limited to 'all police reports, police summary reports, supplemental reports, progress reports, investigative reports of any kind (or) nature, notes, memoranda, crime scene reports, crime scene photographs, canvas reports, witness statements, accused statements, forensic reports, lab reports, test results, booking reports, line-up photo[]s, line-up waivers, line-up reports, recorded
interviews, (or) any other document prepared during the police investigation process of the above case.

CPD responded to [redacted] on January 23, 2013, by providing 50 pages of responsive records and by indicating that another 21 pages and 12 photographs were available upon receipt of $15.15 in reproduction costs. CPD redacted or withheld information under sections 7(1)(b), 7(1)(c), 7(1)(d)(iv), 7(1)(d)(vi), and 7(1)(f) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv), (1)(d)(vi) (1)(f) (West 2012)). This office received [redacted] Request for Review on February 15, 2013, and requested further information from CPD.

On March 20, 2013, CPD supplied this office with a three-page response together with copies of the records in question. CPD withheld seven photographs of the deceased gunshot victim under section 7(1)(c) of FOIA, on the grounds that the graphic photographs would be an unwarranted invasion of the victim's family's privacy. CPD also stated it redacted dates of birth and the employer information of a surviving victim and witnesses.

Citing 7(1)(d)(iv), CPD also redacted the names, addresses, and other identifying information of witnesses who provided information to police. CPD also redacted these individuals' identifying information under section 7(1)(d)(vi), asserting that disclosure of the information would endanger the lives of these witnesses and the surviving victim should such information be released to [redacted]

Finally, CPD withheld a number of handwritten and typed "general progress reports" under section 7(1)(f) because "these records * * * contain notes and recommendations relating to the course of the Department's investigation and possible filing of charges." Other records were withheld but not addressed in CPD's response. Records labeled "Clear Data Warehouse Incident Check From the Crimes Tables," "Supervisory Homicide Audit Review," and a document that appears to be an autopsy report were not addressed in CPD's response but are presumed to have been withheld under 7(1)(f) as well.

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1Letter from [redacted] to Freedom of Information Officer, Records Inquiry Section, Unit 163, Chicago Police Department, (January 15, 2013).

2Home addresses had also been redacted under section 7(1)(b) of FOIA, but [redacted] indicated in his Request for Review he was not challenging any redactions of private information under 7(1)(b).

3Letter from Terrence Collins, Office of Legal Affairs, Chicago Police Department, to Rob Olmstead, Assistant Attorney General, Office of the Attorney General, at 3 (March 20, 2013).
DETERMINATION

Section 7(1)(f)

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f) (West 2012). The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material." Harwood v. McDonough, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." Harwood, 344 Ill. App. 3d at 248. "[T]he deliberative process privilege protects predecisional, deliberative communications that are part of an agency's decision-making process." Parmelee v. Camparone, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. 1998). When a record contains both preliminary recommendations and factual material, the factual material is not covered by the deliberative process privilege and, therefore, must be disclosed. Parmelee, 1998 WL 704181, at *2; see also Ill. Att'y Gen. PAC Req. Rev. Ltr. 20347, issued January 10, 2013, at 3 (requiring release of factual portion of General Progress Reports that could be segregated from opinions and recommendations).

This office has reviewed the General Progress Reports, which primarily contain factual information provided by witnesses. Indeed, the handwritten General Progress Reports mirror much of the typed information already released to [redacted]. Accordingly, this office concludes that CPD has not sustained its burden of demonstrating that these reports are exempt from disclosure in their entirety under section 7(1)(f) of FOIA. We request that CPD release the reports to [redacted] after redacting opinions, recommendations, and other information that may be appropriately withheld under section 7 of FOIA (5 ILCS 140/7 (West 2012)).

The Supervisory Homicide Audit Review consists exclusively of preliminary opinions concerning the status of the case and recommendations for further action. Therefore, we conclude that CPD properly withheld those records under section 7(1)(f).

The CLEAR Data Warehouse Incident Check does not contain any opinions, impressions or recommendations. Similarly, the Cook County Medical Examiner’s report contains entirely factual information and laboratory reports. Such records do not constitute predecisional deliberative material. Accordingly, we conclude that CPD has not sustained its

4Illinois courts have recognized that because Illinois' FOIA statute is based on the federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. Margolis v. Directors, Ill. Dept of Revenue, 180 Ill. App. 3d 1084, 1087 (1989).
burden of demonstrating that those records are exempt from disclosure pursuant to section 7(1)(f) of FOIA.

Sections 7(1)(d)(iv), 7(1)(d)(vi)

Section 7(1)(d)(iv) exempts information that would "unavoidably disclose the identity of * * * persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies." 5 ILCS 140/7(1)(d)(iv) (West 2012). The Office has alleged that CPD redacted the names of witnesses who testified at his trial. This office asked CPD whether any of the individuals whose names were redacted testified at his trial, to which CPD responded that "the Department does not maintain records regarding criminal proceedings and witness testimony."

The Public Access Bureau has previously determined that the section 7(1)(d)(iv) exemption "is limited to confidential information that was not revealed in [court] proceedings * * * and information that identifies witnesses who provided statements to police but did not testify." See Ill. Att'y Gen. PAC Req. Rev. Ltr. 16633, issued March 29, 2013, at 2. Nothing in section 7(1)(d)(iv), however, either expressly or impliedly requires a law enforcement agency to ascertain whether otherwise exempt information in its possession has been disclosed in judicial proceedings. Thus, to the extent that it does not possess records reflecting whether a specific individual testified during a judicial proceeding relating to the requested records, CPD is not obligated to seek that information. Therefore, in the absence of records indicating that a confidential source testified in court, CPD may redact information furnished by confidential sources and also information that would identify individuals who provided statements to police, including names, social security numbers, ages, birth dates, telephone numbers, places of work, addresses and other information that specifically identifies witnesses' residences. CPD may seek to obtain that information from the courts.5

Section 7(1)(c)

Section 7(1)(c) allows a public body to withhold "information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining information." 5 ILCS 140/7(1)(c) (West

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5See section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)), which defines "private information as unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person."
2012). CPD withheld victims' and witnesses' dates of birth, which this office has repeatedly found to be permissible under section 7(1)(c). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 24652, issued June 24, 2013, at 2. CPD also redacted employment information concerning the surviving victim. The assertion of section 7(1)(c) exemption is evaluated on a case-by-case basis. Chicago Journeymen Plumbers' Local Union 130, U.A. v. Dept of Pub. Health, 327 Ill. App. 3d 192, 196 (2001). In this instance, the surviving victim's right to privacy outweighs any legitimate public interest in disclosure of the victim's employment information. Therefore, CPD properly redacted that information under section 7(1)(c).

Additionally, CPD's properly withheld seven postmortem photographs of the victim pursuant to section 7(1)(c). This office has repeatedly determined that release of graphic postmortem photographs would be an unwarranted invasion the privacy of the surviving family members of the victim. See Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 5. [Redacted] argues the display of those photographs in court renders such photographs subject to release. This office disagrees. The photographs were merely displayed, not copied and distributed, in court. Unlike the identity of a witness, a photograph cannot be mentally stored and reproduced by those who witnessed them. Despite their display in court, the photographs remain exempt from disclosure pursuant to section 7(1)(c).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter will serve to close this file. Please contact me at (312) 814-6756 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

[Redacted]

STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

23394 f 71f 71div 71dvi improper 71c 71f 71div 71dvi proper pd
PUBLIC ACCESS OPINION No. 10-003
(Request for Review 2010 PAC 8890, 9217)

FREEDOM OF INFORMATION ACT:
Autopsy Reports

Mr. Richard Velasquez
Special Counsel to the President
Freedom of Information Act Officer
George Dunne, Cook County Administration Building
69 W. Washington, 35th Floor
Chicago, Illinois 60602

Dear Mr. Velasquez:

This binding opinion is issued pursuant to Section 9.5(f) of the Freedom of Information Act (5 ILCS 140/9.5(f), added by Public Act 96-542, effective January 1, 2010).

Background

On September 12, 2009, Christopher Kelly, a businessman and fundraiser for former Governor Rod Blagojevich, committed suicide. In an unrelated case, on November 16, 2009, Michael W. Scott, the president of the Chicago Board of Education, committed suicide. The Office of the Cook County Medical Examiner (Medical Examiner) conducted post-mortem inquiries into the circumstances surrounding their deaths.¹

On January 4, 2010, Chris Fusco, a reporter for the Chicago Sun-Times (referred to collectively as the Sun-Times), e-mailed a Freedom of Information Act (FOIA) request to Cook County seeking to inspect “all reports/documents/records [and] photographs regarding two cases the Cook County Medical Examiner is believed to have closed.” Specifically, Mr. Fusco sought

¹ For purposes of this Opinion, the term “County” includes both the Medical Examiner and Cook County, as the context requires.
access to “records [related to] the suicide of Christopher G. Kelly, deceased on Sept. 12, 2009” and “the suicide of Michael W. Scott, deceased on November 16, 2009.” On January 5, 2010, the County submitted to the Public Access Counselor a document entitled “§ 9.5(b) Notice of Intent to Deny Pursuant to the § 7(1)(c) Privacy Exemption” (Notice of Intent to Deny) with regard to the Sun-Times request. Section 9.5(b) of FOIA (5 ILCS 140/9.5(b), added by Public Act 96-542, effective January 1, 2010), requires a public body that receives a request for records and asserts that the records are exempt from disclosure under, inter alia, Section 7(1)(c) of FOIA, to provide written notice of its intention to deny the request in whole or in part to both the requester and the Public Access Counselor. At the request of the Public Access Counselor, the County supplemented its notice with copies of 24 documents2 and 23 photographs from the Medical Examiner's records relating to the investigation of Mr. Kelly, and 22 documents3 and 17 photographs relating to the investigation of Mr. Scott, which the County proposed to withhold from disclosure.

On February 1, 2010, Anne M. Sweeney, a reporter for the Chicago Tribune (referred to collectively as the Tribune), e-mailed a FOIA request to the County seeking copies of “any documents produced by the Special Counsel regarding any and all reports and documentation of the Michael Scott death investigation examination and autopsy” and “of any intent to deny Freedom of Information requests from any other news outlet.” Ms. Sweeney sent a second e-mail to the County regarding Mr. Kelly's autopsy. On February 3, 2010, the County provided Brendan J. Healey, Tribune Senior Counsel, with an electronic copy of the County’s notice to the Sun-Times, which set out the County’s intention to deny media access to the Medical Examiner’s records relating to the deaths of Mr. Kelly and Mr. Scott.

On February 17, 2010, Ms. Sweeney sent an e-mail to the County attaching copies of two FOIA request letters. The first letter “seeks the autopsy/examination report related to the examination of Michael Scott, including but not limited to the First Call Sheet, Intake Sheet, Release Documents, Investigator’s Report, Toxicology Report, Autopsy Report, Histology Report, letters or communications from the family, police or insurance companies, and photographs.” The second letter requests the same information related to the death of Mr. Kelly.

On February 25, 2010, the County submitted to the Public Access Counselor a second Notice of Intent to Deny, in this case asserting that the documents requested by the Tribune were also exempt from disclosure under Section 7(1)(c) of FOIA.

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2 The documents in the County's first supplemental production to this Office, which relate to Mr. Kelly consist of the following: the First Call Sheet; a personal effects inventory; the deceased remains transportation report; the medical examiner’s case checklist; the authorization for release and removal; the medical examiner case report; the report of the postmortem examination; the results of toxicological analyses; and police reports.

3 The documents in the County's second supplemental production to this Office, which relate to Mr. Scott, consist of the following: the First Call Sheet; the deceased remains transportation report; the medical examiner’s case checklist; a personal effects inventory; an identification certification; the authorization for release; the medical examiner case report; the report of the postmortem examination; the results of toxicological analyses; the police reports; and a letter from the attorney for the Scott family.
Section 7(1)(c) (5 ILCS 140/7(1)(c), as amended by Public Act 96-542, effective January 1, 2010) exempts from inspection and copying “[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless disclosure is consented to in writing by the individual subjects of the information.” The exemption defines “[u]nauthorized invasion of personal privacy” as “the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Id.

On June 4, 2010, and following review of the documents and photographs tendered by the Medical Examiner, the Public Access Counselor responded to the County’s Notice of Intent to Deny, granting in part and denying in part the County’s request to withhold these records and photographs pursuant to Section 7(1)(c). Specifically, the Public Access Counselor denied the County’s request to withhold the autopsy reports and the accompanying documents for Mr. Kelly and Mr. Scott, as well as photographs of the physical evidence contained in the Medical Examiner’s file relating to the death of Mr. Kelly, but approved the County’s request to withhold the post-mortem photographs depicting the bodies of Mr. Kelly and Mr. Scott. A copy of the Public Access Counselor’s response is attached as Exhibit A and is incorporated herein by reference.

On August 3, 2010, Mr. Fusco informed this Office that the County had yet to supply him with the autopsy reports, documents and the photographs of the physical evidence contained in the Medical Examiner’s files or to provide him with a formal denial of his FOIA request. On August 20, 2010, Mr. Healey informed this Office that he likewise had received no records in response to his request. A failure to comply with a FOIA request within the requisite time period is considered a denial of the request. (5 ILCS 140/3(d), as amended by Public Act 96-542, effective January 1, 2010.) Although the time for a public body to respond to a FOIA request is tolled until the Public Access Counselor concludes his or her review of a notice of intent to deny disclosure, the time for the County to respond had clearly lapsed by August 3 and 20, 2010.

Section 9.5 of FOIA (5 ILCS 140/9.5, added by Public Act 96-542, effective January 1, 2010), provides that a person whose request to inspect or copy a public record has been denied by a public body may, no later than 60 days after the date of the final denial, file a written request for review by the Public Access Counselor. Upon determining that further action is warranted, the Attorney General, acting through the Public Access Counselor, shall examine the issues and records, make findings of fact and conclusions of law, and issue a binding opinion to the requester and the public body. Upon receipt of a binding opinion requiring the public body to disclose records, “the public body shall either take necessary action immediately to comply with the directive of the opinion or shall initiate administrative review under Section 11.5 of FOIA” (5 ILCS 140/11.5, added by Public Act 96-542, effective January 1, 2010).

This Office initiated further review with regard to the Sun-Times request on August 20, 2010 and with regard to the Tribune request on August 25, 2010. On September 20, 2010, this Office sent

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4 Unlike the file in Mr. Kelly’s case, the County provided this Office with no photographs of physical evidence relating to Mr. Scott’s death. All photographs related to Mr. Scott depict Mr. Scott’s body post-mortem.
Richard Velasquez  
October 22, 2010  
Page 4

a 21-day extension letter to the County pursuant to Section 9.5(f) of FOIA (5 ILCS 140/9.5(f), added by Public Act 96-542, effective January 1, 2010) and forwarded the County’s response to both the Tribune and the Sun-Times.

Section 9.5(d) of the Freedom of Information Act (5 ILCS 140/9.5(d), added by Public Act 96-542, effective January 1, 2010) provides:

Within 7 working days after it receives a copy of a request for review and request for production of records from the Public Access Counselor5, the public body may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. The requester may, but is not required to, respond in writing to the answer within 7 working days and shall provide a copy of the response to the public body.

The County responded to the allegations in correspondence dated September 15, 2010. The County noted the following with regard to the Medical Examiner’s records relating to Mr. Scott and Mr. Kelly:

[T]he County makes the standing argument that the Chicago Sun-Times and the Chicago Tribune do not have a public interest greater than the interest in the privacy which the Scott and Kelly families have in the documents which are listed below as the information contained on the listed document do not shed light, whatsoever, on the workings of government, but rather only provide information concerning Mr. Scott and Mr. Kelly. Put another way, the private information contained in the following documents is not relevant to any function the County or any other public body. Just the same, the Chicago Sun-Times and the Chicago Tribune have not expressed the basis of the "legitimate public interest," and merely contend that a public interest exists. Further, the County’s review of the documents at issue has not been for the purpose of communicating the presence of private information which is exempt pursuant to Section 7(1)(b); the County reserves the right to perform the redaction of private information on all records responsive to the Chicago Sun-Times and the Chicago Tribune’s FOIA requests.

On October 8, 2010, Esther J. Seitz of the law firm of Donald M. Craven, P.C., submitted a written response on behalf of the Chicago Tribune. The Tribune agreed with the Public Access Counselor’s previous determination that the Medical Examiner’s documents, reports and photographs of physical evidence are not exempt from disclosure under Section 7(1)(c). The Tribune disagreed, however, with the Public Access Counselor’s determination regarding withholding the post-mortem photographs of the bodies, stating:

5 In this case, the documents in question had already been furnished to the Public Access Counselor in connection with its review of the County’s Notices of Intent to Deny.
[W]e respectfully disagree with [the Public Access Counselor's] strong reliance on National Archives and Records Administration v. Favish, 541 U.S. 157 (2004) in interpreting section 7(1)(c) of the FOIA. Favish specifically construed the federal FOIA's privacy exemption which is expressly more expansive than the privacy exemption articulated in the Illinois FOIA at issue here. Compare 5 U.S.C. §552(b)(7)(C), with 5 ILCS 140/7(1)(c). And the public interest in disclosure asserted in Favish was of lesser import than the press' right to gather and disseminate news implicated by this Request.

Analysis

Under Section 1.2 of FOIA (5 ILCS 140/1.2, added by Public Act 96-542, effective January 1, 2010) “[a]ll records in the custody or possession of a public body are presumed to be open for inspection or copying.” Section 1.2 further requires that “[a]ny public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing that it is exempt.” The County has not asserted that the records in question are not “public records” to which the provisions of FOIA are generally applicable, but only that as public records they are subject to exemption from inspection or production under Section 7(1)(c) of FOIA. Specifically, the County asserts that the disclosure of any of the autopsy records and photographs would result in a clearly unwarranted invasion of the surviving family members' personal privacy.

That the common law recognizes the existence of a right to personal privacy is axiomatic, although the boundaries of that right have yet to be fully defined. The Illinois Appellate Court has not had occasion to determine whether the personal privacy interests of surviving family members may be considered in determining whether the disclosure of documents related to their relative's death would constitute an unwarranted invasion of personal privacy for purposes of FOIA. Illinois courts have recognized, however, that because Illinois' FOIA statute is based upon the Federal FOIA statute, decisions construing the latter, while not controlling, may provide relevant and helpful precedents in construing the State Act. Margolis v. Director, Illinois Dept. of Revenue, 180 Ill. App.3d 1084, 1087, appeal denied, 126 Ill. 2d 560 (1989). Based on Federal precedent, Illinois' courts have concluded that resolution of a personal privacy exemption claim requires the balancing of the public's interest in disclosure against the individual's (or in this case, the family's) interest in privacy. See Gibson v. Illinois State Board of Education, 289 Ill. App. 3d 12, 20-21 (1997).

Further, under Federal FOIA, the courts have recognized that a decedent's surviving family members do possess a separate personal privacy interest in "their close relative's death-scene images" and similar records. See National Archives & Records Administration v. Favish, 541 U.S. 157, 123 S. Ct. 1570 (2004), rehearing denied, 541 U.S. 1057, 124 S. Ct. 2198 (2004) (a decedent's surviving family members have a personal privacy interest under Federal FOIA in "their closest relative's death scene images"); see also Katz v. National Archives & Records Administration v. National Archives, 1994 WL 386868 (7th Cir. 1994).

6 In its September 15 response, the County asserts that the "Chicago Sun-Times and the Chicago Tribune have not expressed the basis of the 'legitimate public interest,' and merely contend that a public interest exists." We note that Section 1.2 states that the burden of demonstrating that a document is exempt from disclosure lies exclusively with the public body. Accordingly, the Sun-Times and the Tribune are under no obligation to demonstrate that a legitimate public interest exists.
Autopsy Records (Other Than Post-Mortem Photographs)

When a person in Illinois dies a "sudden or violent death, whether apparently suicidal, homicidal or accidental," it is the duty of the coroner (or the Medical Examiner, in the case of Cook County) to investigate the cause of death. 55 ILCS 5/3-3013 (West 2008). Both Mr. Kelly and Mr. Scott's deaths were the result of suicide. Thus, the circumstances surrounding their deaths necessarily became a public matter, and the records relating to the investigation of their deaths constitute public records which are generally subject to FOIA. These records are presumptively open to inspection and copying. (5 ILCS 140/1.2, added by Public Act 96-542, effective January 1, 2010.) The inquiry does not, however, end at this point. Cook County has asserted that the disclosure of the autopsy records would result in a clearly unwarranted invasion of the surviving families' personal privacy rights, and that the records are therefore exempt from disclosure under Section 7(1)(c).

Surviving family members (including the families of Mr. Kelly and Mr. Scott) have a cognizable personal privacy interest in autopsy records relating to the death of a close relative, which interest must be considered. Accordingly, in order to determine whether Section 7(1)(c) of FOIA exempts those records from disclosure, the interests of the public in accessing the information contained in the specific records requested must be balanced against the family members' interests in limiting public dissemination of that information. See, e.g., Schessler v. Department of Conservation, 256 Ill. App. 3d 198 (4th Dist. 1994) (In determining whether the disclosure of information would constitute a clearly unwarranted invasion of personal privacy, the courts apply a balancing test in which the following factors are considered: (1) the plaintiff's interest in disclosure; (2) the public interest in disclosure; (3) the degree of invasion of privacy; and (4) the availability of alternative means of obtaining the records.)

With respect to Mr. Kelly's investigation, Cook County provided to the Public Access Counselor for review copies of 24 documents and 23 photographs (9 of which depict the autopsy, and which will be addressed below.) The documents consist of: the first call sheet; a personal effects
inventory; the deceased remains transportation report; the medical examiner's case checklist; authorization for release and removal; the medical examiner's case report; the report of the postmortem examination; the results of toxicological analyses; the police reports; and the photographs of physical evidence secured by investigators. With respect to Mr. Scott's investigation, Cook County provided for review 22 documents and 17 photographs (all of which depict Mr. Scott post-mortem). The documents consist of: the first call sheet; the deceased remains transportation report; the medical examiner's case checklist; a personal effects inventory; an identification certification; the authorization for release; the medical examiner's case report; the report of the postmortem examination; the results of toxicological analyses; the police reports; and a letter from the attorney for the Scott family. (For a more detailed catalogue of the general contents of the Medical Examiner's documents, see Exhibit A at 4.)

As previously noted, because of the nature of the deaths of Mr. Kelly and Mr. Scott, the law required the Medical Examiner to investigate. The duty to investigate deaths that occur under questionable or suspicious circumstances is a duty to the public generally, and the public has a legitimate interest in accessing the records that result from the performance of these public duties, at least to the extent that personal privacy rights are not affected or are outweighed by the public’s interest.

With regard to the documents and physical evidence photographs contained in the Medical Examiner’s files, the County has failed to meet its burden of demonstrating by clear and convincing evidence that these documents are highly personal or that disclosure of these documents would be objectionable to a reasonable person, for purposes of Section 7(1)(c). The documents simply record various aspects of the Medical Examiner’s investigation and the results thereof. Although the disclosure of some of the information contained in these records could be undesirable to surviving family members, on balance the rights of the public to a full and complete account of the investigation of Mr. Kelly’s and Mr. Scott’s deaths outweigh the privacy rights of the surviving family members.

In its Notice of Intent to Deny, the County also cited *Trent v. Office of Coroner of Peoria County*, 349 Ill.App.3d 276 (2004). In *Trent*, the Court found that the disclosure of an individual’s medical records would constitute an unwarranted invasion of personal privacy. *Trent*, 349 Ill.App.3d 276, 279. Upon review of the documents and the reports in the Medical Examiner’s files in both Mr. Kelly and Mr. Scott’s cases, however, the Public Access Counselor concluded that such documents and reports are not “medical records.” The County has provided no additional support for its claim that they are such records.

**Post-mortem Photographs**

With respect to disclosure of the post-mortem photographs depicting the bodies of Mr. Kelly and Mr. Scott, other factors must be considered. Unlike the documentary records discussed immediately above, autopsy photographs are, by nature, graphic and gruesome. Further,

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10 The court’s opinion in *Trent* does not describe the “medical records” at issue in that case. The concurrence, however, implies that the “medical records” are records that were obtained by the coroner from attending physicians who rendered medical treatment to the decedent. *Trent*, 349 Ill.App.3d at 282.
surviving family members have legally-recognized rights in the depiction of a decedent’s remains. As the court stated in Melton v. Board of County Commissioners, 267 F. Supp.2d 859, 864 (S. D. Ohio, 2003):

It is not difficult in the light of Brotherton [v. Cleveland, 923 F.2d 477 (6th Cir., 1991) (holding that under Ohio law a spouse had a “legitimate claim of entitlement” in the body of her husband, such that her rights to that body were protected by the due process clause of the Fourteenth Amendment)] to find that families have a right not to be embarrassed or humiliated by the outrageous display or exposure to public view of the remains of a loved one. This is not to say that the official photography of decedent at the scene of death or in an autopsy report would provide the basis for * * * a claim [of invasion of privacy], as long as such official photos remained in the files of the coroner and they were not released to the public. (Emphasis added.)

Illinois law likewise recognizes that the nearest surviving relatives of a decedent have a “quasi-property” right in the decedent’s body. See In re Estate of Medlen, 286 Ill.App.3d 860, 864 (1997).

The Public Access Counselor followed the Federal FOIA precedent in National Archives and Records Administration v. Favish, 541 U.S. 157 (2004), in making the following determinations in response to the County’s Notice of Intent to Deny:

The Kelly family has a cognizable, personal privacy interest in the release of the Medical Examiner’s photographs. In determining whether these records are subject to disclosure, this privacy interest must be weighed against "any legitimate public interest in obtaining the information." In seeking access to all of the information in the Medical Examiner’s files, the Tribune asserted that because Kelly was involved in public controversies and his death was highly publicized, the public has an interest in information regarding his death. While Kelly was a public figure, there has been no showing that the disclosure of photographs of his body during the autopsy is likely to advance the public interests referenced in the Tribune’s FOIA request. See generally Favish, 541 U.S. at 172-73, 124 S. Ct. at 1580-81. In this regard, at least one Illinois court has noted in construing the personal privacy exemption that FOIA is intended to "guarantee that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed." (Emphasis in original.) Trent v. Office of Coroner of Peoria County, 349 Ill. App. 3d 276, 281 (2004), appeal denied, 212 Ill. 2d 556 (2004), citing Lakin Law Firm v. Federal Trade Comm’n, 352 F.3d 1122, 1123 (7th Cir. 2003). On balance, the privacy interests of the Kelly family in the graphic photographs of Mr. Kelly’s body postmortem outweigh the very generalized public interest in obtaining access to these photographs. Accordingly, the County’s request to deny the disclosure of the autopsy photographs of Mr. Kelly’s body is approved.
The Public Access Counselor applied a similar analysis with respect to the post-mortem photographs of Mr. Scott’s body:

Similarly, the County’s use of the section 7(1)(c) exemption with regard to the Medical Examiner’s photographs of Scott's body is approved. Based on our review of the Medical Examiner’s files, each of the 17 photographs that depict Scott’s body postmortem. As noted above, the courts have determined that autopsy photographs are records that are highly personal and their release would be objectionable to reasonable persons. Further, you have indicated that the Scott family has requested privacy. In fact, on behalf of the Scott family, their attorney submitted a letter to the County "requesting that any and all records compiled by your office or in your possession relating to or in any way connected with the death of Michael W. Scott be withheld from public dissemination." See Letter from Enrico J. Mirabelli, Nadler, Pritikin & Mirabelli, LLC, to Dr. Mitra B. Kalelkar, Office of Cook County Medical Examiner (December 17, 2009).

Like Mr. Kelly, Scott was also a public figure. In seeking access to the Medical Examiner’s records, the Tribune noted that Scott was linked to public controversies and his death was highly publicized. Based on this, the Tribune asserts that “much remains to be learned about” his death and the public has an interest in this information. There has been no showing, however, that the disclosure of the autopsy photographs of Scott’s body is likely to advance the general public interest referenced in the Tribune’s FOIA request.

Federal precedent establishes that under the Federal FOIA, Mr. Kelly’s and Mr. Scott’s surviving family members have a protectable privacy interest against the disclosure of post-mortem photographs of the decedents. This precedent provides persuasive guidance in interpreting the similar language in Illinois’ Freedom of Information Act. Margolis, 180 Ill.App.3d at 1087. In the absence of a clear indication of a contrary intent on the part of the Illinois General Assembly in enacting and amending the Illinois FOIA, the analysis in Favish will apply to these circumstances.

The Tribune argues, however, that the specific language of Section 7(1)(c) is narrower than that of the Federal FOIA. Specifically, the Tribune argues that the term “the subject’s right to privacy,” in Section 7(1)(c)’s definition of unwarranted invasion of personal privacy, limits the application of that section to the privacy rights of the “subjects” of the photographs, in this case the two decedents, and that because a person’s privacy rights do not survive his or her death, there can be no protectable privacy interest.11

The California Court of Appeals recently addressed a similar claim in Catsouras v. California Highway Patrol, 181 Cal. App. 4th 856 (2010), noting the unique nature of the privacy interests attaching to post-mortem photographs:

California law clearly provides that surviving family members have no right of privacy in the context of written media discussing, or pictorial media portraying,

11 In making its argument that personal privacy interests do not survive death, the Tribune relies exclusively on tort principles, which do not limit the rights and duties established by FOIA.
the life of a decedent. Any cause of action for invasion of privacy in that context belongs to the decedent and expires along with him or her. (Flynn v. Higham, (1983) 149 Cal. App. 3d 677, 197 Cal. Rptr. 145.) The publication of death images is another matter, however. How can a decedent be injured in his or her privacy by the publication of death images, which only come into being once the decedent has passed on? The dissemination of death images can only affect the living. As cases from other jurisdictions make plain, family members have a common law privacy right in the death images of a decedent, subject to certain limitations. (Emphasis added.)

As the Supreme Court noted in Favis, with respect to the Federal personal privacy exemption upon which Illinois' Section 7(1)(c) was patterned:

We have observed that the statutory privacy right protected by Exemption 7(C) goes beyond the common law and the Constitution. See Reporters Committee, 489 U.S., at 762, n. 13, 109 S.Ct. 1468 (contrasting the scope of the privacy protection under FOIA with the analogous protection under the common law and the Constitution); see also Marzen v. Department of Health and Human Servs., 825 F.2d 1148, 1152 (C.A.7 1987) ("[T]he privacy interest protected under FOIA extends beyond the common law"). It would be anomalous to hold in the instant case that the statute provides even less protection than does the common law. (Emphasis added.)

The same is true of Section 7(1)(c) of the Illinois FOIA. Section 7(1)(c) is intended to provide protection against clearly unwarranted invasions of privacy that might otherwise occur due to government action, not to diminish privacy rights that arise from other sources, such as the common law. To accept the Tribune's argument would result in precisely the "anomalous result" that the Court rejected in Favis: the deprivation of a recognized privacy interest by a statute intended to protect those interests. Accordingly, under the specific facts of this request, we reject an interpretation of the phrase "the subject's right to privacy" that would disregard the recognized privacy interests of close family members in the post-mortem photographs of their relatives' bodies.

The Tribune also argues that the language "would constitute a clearly unwarranted invasion of personal privacy" in Section 7(1)(c) of the Illinois FOIA sets a more restrictive standard than the Federal FOIA's "could reasonably be expected to constitute" an invasion of privacy language. Under these facts, it is unnecessary to resolve this issue because we have concluded that disclosure of the very graphic post-mortem photographs of the bodies of Mr. Kelly and Mr. Scott would constitute an actual unwarranted invasion of the surviving family members' privacy, not that disclosure "could" or "might" do so.

The Tribune also argues that because the deaths of Mr. Kelly and Mr. Scott were "newsworthy," disclosure of records concerning their deaths "can not support an invasion of privacy." While that argument may be apropos with respect to the recovery of damages for the tort of "invasion of privacy," it does not control the privacy interests protected by FOIA. Indeed, FOIA extends protection to information the release of which might not be actionable in tort. For example,
Section 7(1)(b) of FOIA protects from disclosure “private information,” which is defined to include a number of unique identifiers. Although the improper disclosure of “private information” might not rise to the level of an invasion of privacy under tort law, FOIA nonetheless protects against it. Likewise, an “unwarranted invasion of personal privacy,” for purposes of FOIA, is not limited to circumstances that would constitute the tort of “invasion of privacy” under common law principles.

Further, the requesting parties have not asserted that access to the post-mortem photographs of the bodies of Mr. Kelly and Mr. Scott would provide any information regarding the causes of death that cannot be gleaned from the documentary records. Although the deaths of Mr. Kelly and Mr. Scott may have been newsworthy, as the Tribune posits, the fact that the public is interested in the circumstances regarding their deaths does not open the door to any and all information in the custody of public officials, and, in this case, it does not open the door to the disclosure of graphic photographs of their bodies. The rights of the public to access documents pertaining to events must be balanced, in this case, against the rights of the surviving family members.

Findings and Conclusions

After full review and giving due consideration to the arguments of the parties, the Public Access Counselor’s findings, and the applicable law, the Attorney General finds that:

1). The Requests for Review were timely filed and otherwise comply with Section 9.5 of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to the disclosure of the records in issue.

2). The County has not produced to the requesters for inspection or copying the requested documents and photographs, notwithstanding the Public Access Counselor’s denial of the County’s request to withhold the documents (other than the post-mortem photographs of the decedents) pursuant to Section 7(1)(c) of FOIA.

3). Cook County has, as a matter of law, denied the FOIA requests of the Tribune and the Sun-Times by failing to furnish the requested documents (except for the post-mortem photographs, which the Public Access Counselor determined were exempt from disclosure) within the response period.

4). The County has failed to sustain its burden of demonstrating that the documents and reports in the Medical Examiner’s files for both Mr. Kelly and Mr. Scott, together with the photographs of physical evidence relating to the death of Mr. Kelly, are exempt from disclosure under Section 7(1)(c) of FOIA.

5). The County has sustained its burden of demonstrating that the release of the post-mortem photographs of the bodies of Mr. Kelly and Mr. Scott would constitute a clearly unwarranted invasion of the surviving family members’ personal privacy.
In conclusion, it is the opinion of the Attorney General that the County has, in violation of the requirements of the Freedom of Information Act, improperly denied the Tribune’s and the Sun-Times’ requests for access to and/or copies of documents (other than post-mortem photographs of the decedents) relating to the deaths of Christopher Kelly and Michael W. Scott. Accordingly, the County is directed to take immediate and appropriate action to comply with this opinion by furnishing to Mr. Fusco and Ms. Sweeney the documents, reports and photographs in the Medical Examiner’s files relating to both Mr. Kelly and Mr. Scott (other than the post-mortem photographs of the decedents). The County may redact any “private information” contained in these records pursuant to Section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b)).

This opinion shall be considered a final decision of an administrative agency, for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/Art.III.

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:

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February 10, 2016

PUBLIC ACCESS OPINION 16-002
(Request for Review 2015 PAC 38303)

FREEDOM OF INFORMATION ACT:
Disclosure of Post-mortem Photographs
to the Executor of the Decedent's Estate

Mr. Larry Young
804 Newton Avenue
Johnston City, Illinois 62951

Master Sergeant Kerry Sutton
Legal Counsel
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703

Dear Mr. Young and Master Sergeant Sutton:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f)
of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons
discussed below, this office concludes that the Illinois State Police (ISP) violated FOIA by
improperly withholding post-mortem photographs requested by the decedent's father and
executor of her estate.

BACKGROUND

On August 12, 2015, Mr. Larry Young submitted a FOIA request to ISP seeking
records pertaining to the death of his daughter, Molly Young. Among other things, the FOIA
request sought "[a]ll crime scene photographs, autopsy photographs, images and trajectory diagram[s]."¹

On September 30, 2015, ISP responded to Mr. Young's August 12, 2015, FOIA request by providing certain information, but redacted or withheld portions of the responsive records pursuant to sections 7(1)(b)² and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2014), as amended by Public Act 99-298, effective August 6, 2015).³ ISP withheld the autopsy photographs and crime scene photographs in their entirities.⁴

On October 26, 2015, Mr. Young submitted a Request for Review to the Public Access Bureau asserting, in part, that "[a]s father and executor of Molly's estate [he is] the only requestor that has the legal right to all the crime scene photos/videos and autopsy photos/videos including the graphic photos."⁵ On November 4, 2015, the Public Access Bureau forwarded a copy of the Request for Review to ISP and asked ISP to provide a detailed explanation of its legal and factual bases for withholding those records.⁶ ISP did not receive this office's November 4, 2015, correspondence, and a copy of the letter was forwarded to ISP on November 18, 2015.⁷ On November 30, 2015, ISP responded and stated, in pertinent part:

¹FOIA request from Larry Young to Lieutenant Steve Lyddon, Illinois State Police, Freedom of Information Officer (August 12, 2015). As both Mr. Young and ISP used the term "crime scene" to refer to the scene of Ms. Young's death, this office uses that term in this opinion without implying any conclusion by this office as to the circumstances of Ms. Young's death. The Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 et seq. (West 2014)). See 15 ILCS 205/7(c)(3) (West 2014).

²ISP's assertion of section 7(1)(b) applied to redactions in other records provided to Mr. Young that are not at issue in this opinion.

³Letter from Aaron Harris, Esq., FOIA Officer, Illinois State Police, to Larry Young (September 30, 2015).

⁴In response to a previous Request for Review, this office had determined that ISP failed to sustain its burden of demonstrating that Mr. Young was not entitled to those records and directed ISP to provide them to him. Ill. Atty Gen. PAC Req. Rev. Ltr. 28651, issued June 29, 2015. ISP did not comply with that non-binding determination.

⁵Letter from Larry Young to Josh Jones, Public Access Bureau, Office of the Attorney General (October 26, 2015).


⁷E-mail exchange between Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, and Master Sergeant Kerry Sutton, Legal Counsel, Illinois State Police (November 18, 2015).
18) * * * Graphic photos of the crime scene and autopsy are exempt per the AG's opinions found in the Law Enforcement FOIA guide provided by the Public Access Counselor's office. Those opinions state:

- Graphic photographs and descriptions of alleged offenses, such as sex crimes, may frequently be withheld under 7(1)(c). See 2010 PAC 7791 (Ill. Att'y Gen. PAC Pre-Auth. al7791, issued June 29, 2010, at 2) and 2010 PAC 9091 and 9164 (Ill. Att'y Gen. PAC Pre-Auth. al9091, 9164 issued August 23, 2010, at 2)
  

Additionally, please see United States Supreme court case "National Archives and Records Administration v. Favish et al., 541 US 157 (2004).”[8]

On December 4, 2015, this office forwarded a copy of ISP's response to Mr. Young. On December 14, 2015, Mr. Young replied by citing this office's previous determination, in an earlier Request for Review, that ISP had improperly withheld the crime scene and autopsy photographs from him. By telephone on February 3, 2016, Mr. Young informed the Public Access Bureau that he wished to narrow the scope of this Request for Review to ISP's denial of the crime scene photographs and autopsy photographs.  

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On December 28, 2015, this office properly extended the time in which to issue a binding opinion by 30 business days, to February 10, 2016, pursuant to section 9.5(f) of FOIA.\(^{12}\)

**ANALYSIS**

"It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

Section 7(1)(c) of FOIA exempts from disclosure:

> Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.

"Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. (Emphasis added.)

A public body's assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the records to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

Because an individual's personal privacy interest ceases to exist upon death, Ms. Young does not have a privacy interest in the withheld photographs. *See* Ill. Att'y Gen. Pub.

\(^{12}\)Letter from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Larry Young, and Master Sergeant Kerry Sutton, Legal Counsel, Illinois State Police (December 28, 2015).

In National Archives, the United States Supreme Court analyzed whether the Federal FOIA's personal privacy exemption13 permitted a public body to withhold from a non-family member the death scene images of President Clinton's deputy counsel, Mr. Vincent Foster, who was officially determined to have committed suicide. Mr. Foster's surviving family members objected to disclosure of the photographs. National Archives, 541 U.S. at 160-61, 166 124 S. Ct. at 1574, 1577-78. The Court noted:

The family does not invoke Exemption 7(C) on behalf of Vincent Foster in its capacity as his next friend for fear that the pictures may reveal private information about Foster to the detriment of his own posthumous reputation or some other interest personal to him. If that were the case, a different set of considerations would control. Foster's relatives instead invoke their own right and interest to personal privacy. They seek to be shielded by the exemption to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility, not for the sake of the deceased. National Archives, 541 U.S. at 166, 124 S. Ct. at 1577.

In light of the applicable precedents, the Court "conclude[d] from Congress' use of the term 'personal privacy' that it intended to permit family members to assert their own privacy rights against public intrusions long deemed impermissible under the common law and in our cultural traditions." National Archives, 541 U.S. at 167, 124 S. Ct. at 1578. Thus, the Court held "that FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images." National Archives, 541 U.S. at 170, 124 S. Ct. at 1579. Because the requester did not demonstrate that the public interest in disclosure of the photographs outweighed the objecting family members' privacy interests, the Court held that providing him with the responsive photographs would constitute an unwarranted invasion of the objecting family members' personal privacy. National Archives, 541 U.S. at 174-75, 124 S. Ct. at 1581-82.

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13 5 U.S.C. § 552(b)(7)(C) (2002). The exemption allowed federal government agencies to withhold "records or information compiled for law enforcement purposes[ ]" if their production "could reasonably be expected to constitute an unwarranted invasion of personal privacy[ ]"
Similarly, in Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, at 1-2, the requesters who sought autopsy and other post-mortem images were not related to the decedents. Further, the surviving family members in the matters addressed by the binding opinion also strongly objected to disclosure of the post-mortem photographs of the decedents. Based on those objections, the Attorney General concluded that the public body "sustained its burden of demonstrating that the release of the post-mortem photographs of the bodies of [the decedents] would constitute a clearly unwarranted invasion of the surviving family members' personal privacy." Ill. Att'y Gen Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 11.

In contrast, Mr. Young has expressly requested copies of the photographs of his daughter. Ms. Young was not married, and Mr. Young has been appointed as the executor of her estate. The circumstances here are therefore distinctly different from those addressed in National Archives and Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, both of which concerned requests by non-family members. Clearly, an individual may consent to the disclosure of information in which he or she has a personal privacy interest. ISP has not articulated a legal rationale that justifies withholding personal information concerning Ms. Young from her father, including her death-scene and autopsy photographs. Accordingly, this office concludes that ISP has not sustained its burden of demonstrating by clear and convincing evidence that the responsive photographs are exempt from disclosure to Mr. Young.

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14 E-mail from Richard Velázquez, Special Counsel to the President, Office of the President, Cook County Board of Commissioners, to Matthew C. Rogina, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (September 15, 2010).

15 None of the Public Access Counselor's pre-authorization letters that ISP cited in its response to this office involved a FOIA request seeking information concerning one of the requester's own family members. Instead, all of the requests were submitted by third parties who did not assert that they had the consent of the surviving family members to obtain personal information concerning the decedents.

16 On February 28, 2015, Mr. Young provided this office with a document filed with the Circuit Court of the First Judicial Circuit on October 25, 2012, which states that he had been appointed Independent Administrator of his daughter's estate. Letters of Office - Decedent's Estate, In the Matter of the Estate of Molly Marie Young, Deceased, No. 12-P-88 (Circuit Court, Jackson County). Under the law, "[t]he executor or the administrator with the will annexed shall administer all the testate and intestate estate of the decedent." 755 ILCS 5/6-15 (West 2014).

17 This office notes that providing personal information concerning Ms. Young to the requester does not mean that ISP must provide the same information to other requesters who are unrelated to Ms. Young. Mr. Young has consented to the disclosure of personal information concerning his daughter to him, not to others. Mr. Young has requested that ISP not release further personal information concerning Ms. Young to the general public.
Mr. Larry Young
Master Sergeant Kerry Sutton
February 10, 2016
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FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On August 12, 2015, Mr. Larry Young submitted a FOIA request to the Illinois State Police seeking records relating to the death of his daughter, Molly Young. Among other things, the request sought "[a]ll crime scene photographs, [and] autopsy photographs" relating to Ms. Young's death.

2) On September 30, 2015, ISP denied the request for those photographs, citing section 7(1)(c) of FOIA, which exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

3) On October 29, 2015, the Public Access Bureau received Mr. Young's October 26, 2015, Request for Review letter in which he disputed the denial of his request for those photographs. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)).

4) On November 4, 2015, and November 18, 2015, the Public Access Bureau sent a copy of Mr. Young's Request for Review to ISP and asked it to provide a detailed explanation of the legal and factual bases for withholding those photographs. On November 30, 2015, the ISP responded to this office.

5) This office forwarded a copy of ISP's response to Mr. Young on December 4, 2015. On December 18, 2015, by a letter dated December 14, 2015, this office received Mr. Young's reply to ISP's response.

6) On December 28, 2015, this office properly extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) ISP has failed to demonstrate by clear and convincing evidence that the photographs in question are exempt from disclosure to Mr. Young pursuant to section 7(1)(c) of FOIA. In these circumstances, Mr. Young, as the father of the decedent and the executor of her estate, has consented through his FOIA request to the disclosure to him of personal information
concerning his daughter. He has therefore waived his personal privacy interest in withholding the photographs from dissemination to him. ISP has not articulated a legal rationale that would justify withholding personal information concerning Molly Young from her father, including her death-scene and autopsy photographs.

Therefore, it is the opinion of the Attorney General that ISP improperly denied Mr. Young's Freedom of Information Act request for crime scene photographs and autopsy photographs in violation of the requirements of the Act. Accordingly, ISP is directed to take immediate and appropriate action to comply with this opinion by providing Mr. Young with copies of those photographs.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 et seq. (West 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Larry Young as defendants. See 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:

Michael J. Luke
Counsel to the Attorney General
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 25, 2016

P.O. Box 089002
Chicago, Illinois 60608

Via electronic mail
Mr. Ralph Price
General Counsel
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653
pacola@chicagopolice.org

RE: FOIA Request for Review – 2015 PAC 37628; CPD No. 15-2804

Dear [Redacted] and Mr. Price:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons discussed below, this office concludes that the Chicago Police Department (CPD) improperly withheld certain information responsive to [Redacted] May 11, 2015, FOIA request.

On that date, [Redacted] submitted a five-part FOIA request to CPD seeking copies of records relating to case 14-CR-16286. Specifically, he requested: (1) felony complaints; (2) arrest reports; (3) supplementary reports; (4) 911 call/event query; and (5) any written and/or oral statements signed or unsigned by police, witnesses, or himself. On August 13, 2015, CPD responded by providing [Redacted] with a copy of the arrest report, but redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(vi) (West 2014)). CPD also stated that it withheld the supplementary reports and written/oral statements in full under sections 7(1)(d)(i), 7(1)(d)(iii), 7(1)(d)(iv), and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(i), (1)(d)(iii), (1)(d)(iv), (1)(d)(vi) (West 2014)). Additionally, CPD asserted that it did not possess responsive felony complaints and that it did not maintain the 911 call records, as the City of Chicago's Office of Emergency Management and Communications is the public body that maintains 911 call records. On September 17, 2015, [Redacted] filed this
Request for Review contending that CPD improperly responded to parts 1, 2, 3, and 5 of his request.¹

On September 25, 2015, this office forwarded a copy of Request for Review to CPD and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation for the exemptions it asserted. On October 22, 2015, CPD provided this office with those records and a written response. CPD's response was forwarded to him, he did not reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2014).

Section 7(1)(b) of FOIA

Under section 7(1)(b), "[p]rivate information" is exempt from disclosure "unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)) defines "private information" as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added.)

CPD stated that arrest report was redacted pursuant to section 7(1)(b) of FOIA. Personal telephone numbers, employee identification numbers, and home addresses were redacted. That information is specifically defined as "private information" under the plain language of section 2(c-5) of FOIA. Accordingly, we conclude that CPD did not improperly redact this information under section 7(1)(b).

¹This office initially opened Request for Review 2015 PAC 37617 with respect to the same request; that file has been closed as duplicative of this one.
Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Further, section 7(1)(c) states that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

CPD's response to this office did not identify which portions of the responsive records CPD redacted pursuant to section 7(1)(c). Based on our review of the records, it appears that the information that CPD may have redacted pursuant to section 7(1)(c) is dates of birth, victims' names, the name of a representative of the State's Attorney's Office, the names of hospitals where victims were treated, descriptions of victims' injuries, and a victim's gender and race.

As to the dates of birth, this office has consistently determined that the disclosure of an individual's date of birth would constitute a clearly unwarranted invasion of personal privacy, and, therefore, that dates of birth are exempt from disclosure under section 7(1)(c) of FOIA. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18980, December 18, 2013, at 4. Accordingly, CPD did not improperly redact a date of birth.

This office has also consistently determined that the disclosure of the identity of a victim of an alleged criminal offense would constitute a clearly unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18980, issued December 18, 2013, at 4 ("Information identifying an individual as a victim of a crime is highly personal by its very nature."). Accordingly, CPD did not improperly redact the information identifying a private citizen who reportedly was a victim of an offense. However, CPD improperly redacted the names of CPD officers who sustained injuries or were otherwise involved in the arrest, as the officers' names bear on their public duties as public employees and therefore are excluded from the definition of unwarranted invasion of personal privacy in section 7(1)(c) of FOIA. For the same reason, CPD improperly redacted the name of a representative of the State's Attorney's Office.
Mr. Ralph Price
April 25, 2016
Page 4

As for the names of hospitals where victims were treated, this office has previously determined that the name of a hospital is not personal information, and thus disclosure would not cause an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Pre-Auth. d112961, issued March 22, 2011, at 2. Additionally, this office has previously determined that the disclosure of general information concerning a reported injury – as opposed to a specific diagnosis or type of medical treatment – would not constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Pre-Auth. d114152, issued May 25, 2011, at 2. The arrest report provides brief, general, non-graphic descriptions of injuries. CPD has not sustained its burden of demonstrating that disclosure of this information would cause an unwarranted invasion of personal privacy.

Finally, CPD redacted a victim's race and gender. This office has repeatedly determined that one's race is highly personal information, but that gender is not highly personal and that disclosure would not be objectionable to a reasonable person. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18274, May 27, 2012, at 3-4; Ill. Att'y Gen. PAC Req. Rev. Ltr. 18974, issued May 23, 2012, at 4-5. Accordingly, CPD improperly redacted a victim's gender.

Section 7(1)(d)(i) of FOIA

Section 7(1)(d)(i) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request[]." "The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest." Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 536 (2nd Dist. 1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. See Day v. City of Chicago, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009).

In its response to request, CPD merely stated that the records relate to an ongoing criminal trial involving and that disclosure of the withheld information would jeopardize the fairness of the investigation and trial. Similarly, in its explanation to this office, CPD simply stated that prosecution is ongoing. A public body must set forth facts as to how disclosure would interfere with a law enforcement proceeding in order to properly withhold information pursuant to section 7(1)(d)(i) of FOIA. Accordingly, we conclude that CPD did not meet its burden of demonstrating by clear and convincing evidence that responsive information is exempt from disclosure under section 7(1)(d)(i) of FOIA.
Section 7(1)(d)(iii) of FOIA

Section 7(1)(d)(iii) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing[]."

As with section 7(1)(d)(i) of FOIA, a public body must demonstrate how disclosure of responsive records would create a substantial likelihood of depriving an individual of a fair trial or an impartial hearing. The requested records about his own arrest, and CPD did not articulate or provide evidence as to how disclosure of the responsive records would deprive him or any other individual of a fair trial or an impartial hearing. Accordingly, we conclude that the CPD did not meet its burden of demonstrating by clear and convincing evidence that the requested records are exempt from disclosure under section 7(1)(d)(iii) of FOIA.

Section 7(1)(d)(iv) of FOIA

Section 7(1)(d)(iv) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[]." This provision allows police departments to protect the anonymity of persons who provide them with information. Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01, 808 N.E.2d 56, 66 (1st Dist. 2004). Records may be withheld in their entireties if disclosure of the contents "would necessarily result in the disclosure of the identity of the source" of the information and, therefore, "redaction of the [records] cannot be meaningfully accomplished." Copley Press, Inc. v. City of Springfield, 266 Ill. App. 3d 421, 426 (4th Dist. 1994).

CPD did not explain to this office what information it withheld pursuant to section 7(1)(d)(iv). This office's review of the arrest report revealed that CPD redacted parts of the incident narrative. Based on our review, CPD did not improperly redact a sentence depicting information provided to CPD by a private citizen upon an officer's arrival. However, CPD did not demonstrate that redacting any other portions of the responsive records (aside from the name
of an alleged victim, as set forth above) is necessary to protect the identity of a witness within the meaning of section 7(1)(d)(iv). In particular, CPD improperly redacted the description of the interaction between [redacted] and the officers on the scene. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 26558, issued January 7, 2014, at 3 ("Construing section 7(1)(d)(iv) to apply to individuals who provide information for a[n] * * * investigation pursuant to their duties as public servants would yield [an] absurd result, and statutes should be construed to avoid absurdity.").

Section 7(1)(d)(vi) of FOIA

Section 7(1)(d)(vi) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "endanger the life or physical safety of law enforcement personnel or any other person."

Again, a public body must provide information as to how disclosure of responsive records would endanger the life or physical safety of law enforcement personnel or any other person if it wishes to withhold information under a law enforcement exemption such as this one. CPD did not explain how the life or physical safety of law enforcement personnel or any other person would be endangered by disclosure. Accordingly, we conclude that the CPD did not meet its burden of demonstrating by clear and convincing evidence that the requested records are exempt from disclosure under section 7(1)(d)(vi) of FOIA.

Completeness of Response (Re: Felony Complaints)

FOIA requires a public body to conduct a "reasonable search tailored to the nature of a particular request." Campbell v. U.S. Dept of Justice, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body is not required to "search every record system[.]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." Oglesby v. U.S. Dept of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). However, "[a] requester is entitled only to records that an agency has in fact chosen to create and retain." Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

In its response to this office, CPD explained that it does not possess a responsive felony complaint as felony complaints go with an arrestee (i.e. are sent to the State's Attorney's Office) when an arrestee leaves CPD's custody. This office has not received any evidence indicating that CPD is in possession of a responsive felony complaint. Accordingly, we conclude that the CPD did not improperly respond that it did not possess a record responsive to that portion of the request.
In accordance with these conclusions, we request that CPD provide with a supplemental response containing copies of the responsive records, subject only to the redactions identified as permissible above.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Chicago address listed on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,

JOSH JONES
Supervising Attorney
Public Access Bureau
April 23, 2012

Shawnee Correctional Center
6665 Route 146 East
Vienna, Illinois 62995

Officer Jack Enter
Assistant FOIA Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

RE: FOIA Pre-Authorization Request - 2011 PAC 12784

Dear [Redacted] and Officer Enter:

The Public Access Bureau has completed its analysis of a Request for Review from [Redacted] concerning the Chicago Police Department's denial of his request for information under the Freedom of Information Act (FOIA) (5 ILCS 140/1 et seq. (West 2010)). The FOIA request sought copies of the photographic lineup in RD #HR-343091, which is a criminal matter in which [Redacted] was accused of burglary.

The Department originally notified [Redacted] in writing that he could receive copies of the requested photographs upon payment of the appropriate fee. After [Redacted] mother sent the Department a check for the fee, however, the Department returned the check and stated in the accompanying letter that the photographs were exempt from disclosure under section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2010)). Section 7(1)(d)(i) exempts records when disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request." The Department asserted that release of the lineup photographs would interfere with the prosecution of [Redacted] for burglary. After the Department asserted this exemption and returned the check for the photographs [Redacted] was convicted of burglary.
DETERMINATION

Now that the burglary prosecution of [redacted] has been concluded, there is no longer any potential basis for the Department to assert that the lineup photographs are exempt from disclosure under section 7(1)(d)(i). Accordingly, those photographs should be released to [redacted] upon payment of the appropriate fee. To the extent that the lineup photographs show images of individuals who were not charged with any crime, and who were not Department employees, their images may be redacted or blacked out under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2010)). See III. Att'y Gen. PAC Pre-Auth. dl13215, issued August 12, 2011. Section 7(1)(c) exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The provision defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

This office has previously determined that names and images of lineup participants who were not charged with a crime generally are exempt under section 7(1)(c) because disclosure of their names and images would result in an unwarranted invasion of personal privacy. See III. Att'y Gen. PAC Pre-Auth. dl13215, issued August 12, 2011; III. Att'y Gen. PAC Req. Rev. Ltr. 13176, issued June 27, 2011; III. Att'y Gen. PAC Pre-Auth al8440, issued July 20, 2010. If the lineup participants are Department officers or employees, however, their images are not exempt under section 7(1)(c) because that provision states, "The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." Accordingly, the images of lineup participants who were not charged with a crime may be redacted or blacked out only if they were not officers or employees of the Department.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-2770 if you have any questions or would like to discuss the matter.

Very truly yours,

JOHN SCHMIDT
Senior Assistant Attorney General
Public Access Bureau
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 26, 2014

Via electronic mail
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Via electronic mail
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RE: FOIA Request for Review – 2014 PAC 31526

Dear Ms. Covey and Ms. Shinberger:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that Western Illinois University (University) withheld non-exempt information responsive to Ms. Jacqueline N. Covey's September 24, 2014, FOIA request.

On that date, Ms. Covey, News Editor of the Western Courier, submitted a FOIA request to the University seeking information concerning the arrests of two named individuals. On September 26, 2014, the University denied the request in its entirety under sections 7(1)(c), 7(1)(d)(i), 7(1)(d)(ii), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(c), (1)(d)(i), (1)(d)(ii), (1)(d)(iv) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014). On September 29, 2014, the Public Access Bureau received the above-captioned Request for Review contesting the University's denial.
On October 6, 2014, the Public Access Bureau forwarded a copy of the Request for Review to the University and asked it to provide copies of the responsive records for our confidential review, together with a detailed explanation for the asserted exemptions. On October 14, 2014, this office received those records and the University's written response maintaining that its denial was proper. On October 22, 2014, Ms. Covey replied that she still believes her request should be granted.

**DETERMINATION**

All public records in the possession or custody of a public body "are presumed to be open to inspection and copying." 5 ILCS 140/1.2 (West 2012); see also *Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012). A public body that wishes to deny a FOIA request must provide "the reasons for the denial, including a detailed factual basis for the application of any exemption claimed." (Emphasis added.) 5 ILCS 140/9(a) (West 2012).

As an initial matter, we note that section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2012)) requires release of the following arrest records:

(i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

However, section 2.15(c) of FOIA (5 ILCS 140/2.15(c) (West 2012)) provides:

Information described in items (iii) through (vi) of subsection (a) may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or compromise the security of any correctional facility.
The disclosure of certain information identifying the arrestee and any charges is mandatory under sections 2.15(a)(i) and (a)(ii), and the University has not provided this office with any information to indicate that disclosure of the responsive information, if any, described in the remaining subsections would interfere with any law enforcement proceeding, endanger any person, or compromise the security of any facility.\footnote{We note that the University provided this office with a September 24, 2014, e-mail that it sent to media organizations, including the requester's, giving notice of the arrestees' names, ages, addresses, charges, times and locations of arrest, and times of incarceration. However, the University did not provide, or otherwise address, the information that must be disclosed under section 2.15 in response to the present FOIA request.} Accordingly, the University violated FOIA by withholding the information that section 2.15(a) requires it to disclose.

\textbf{Sections 7(1)(d)(i), 7(1)(d)(iii), and 7(1)(d)(iv) of FOIA}

Sections 7(1)(d)(i) and 7(1)(d)(iii) of FOIA exempt from disclosure:

(d) Records in the possession of * * * any law enforcement * * * agency for law enforcement purposes, \textit{but only to the extent that disclosure would}: 

(i) \textit{interfere with pending or actually and reasonably contemplated law enforcement proceedings} conducted by any law enforcement or correctional agency that is the recipient of the request; [or]

* * *

(iii) \textit{create a substantial likelihood} that a person will be deprived of a fair trial or an impartial hearing.

(iv) \textit{unavoidably disclose} the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]. (Emphasis added.)

In its September 26, 2014, response to Ms. Covey, the University merely reiterated the language of those provisions. In response to this office's letter of further inquiry seeking a \textit{detailed} explanation for the asserted exemptions, the University claimed, as to section 7(1)(d)(i): "At the time of the FOIA request, the reports had not been sent to the State's Attorney, nor to Student Judicial Programs. The Investigations Division was still conducting the
investigation into the matter." As to section 7(1)(d)(iii), the University claimed: "If the case results in a trial by jury in McDonough County Circuit Court, releasing the report information in advance could deprive the defendants of a fair trial/ impartial hearing." Lastly, as to section 7(1)(d)(iv), the University claimed: "As the incident took place in a WIU residence hall, among individuals who knew one another, releasing the report, even with redacting the victims' names, could result in the inadvertent identification of the victim and witnesses."

As noted above, section 9(a) of FOIA requires a public body to provide a detailed factual basis in order to deny a request. To sustain its burden of demonstrating that the responsive records are exempt from disclosure in their entireties under sections 7(1)(d)(i) and 7(1)(d)(iii), the University was required to show how the release of the records would interfere with an ongoing investigation and create a substantial likelihood that a person will be deprived of a fair trial or impartial hearing. "Simply saying there is an 'ongoing criminal investigation because the case has not been cleared,' with little additional explanation, is not 'objective indicia' sufficient to show the ongoing investigation exemption applies." Day v. City of Chicago, 388 Ill. App. 3d at 76, quoting Illinois Education Association v. Illinois State Board of Education, 204 Ill.2d 456, 470 (2003); see also Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 536 (2nd Dist. 1989) ("The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest."); see also Ill. Att'y Gen. PAC Req. Rev. Ltr. 21902, issued October 3, 2014, at 6; Ill. Att'y Gen. PAC Req. Rev. Ltr. 25014, issued June 5, 2014, at 4.

The University's assertions of sections 7(1)(d)(i) and 7(1)(d)(iii) are conclusory. In the absence of facts demonstrating how release of the responsive records would interfere with an investigation or create a substantial likelihood that a person will be deprived of an impartial hearing, the University's claims are insufficient to sustain its burden of showing by clear and convincing evidence that either exemption is applicable here.

On the other hand, section 7(1)(d)(iv) allows law enforcement agencies to protect the anonymity of persons who provide them with information. See, e.g., Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01 (2004) (names and

\[\textit{\textsuperscript{2}Letter from Darcie R. Shinberger, Assistant Vice President, Advancement& Public Services, to Joshua Jones (October 13, 2014).}\]

\[\textit{\textsuperscript{3}Letter from Darcie R. Shinberger, Assistant Vice President, Advancement& Public Services, to Joshua Jones (October 13, 2014).}\]

\[\textit{\textsuperscript{4}Letter from Darcie R. Shinberger, Assistant Vice President, Advancement& Public Services, to Joshua Jones (October 13, 2014).}\]
addresses of beat meeting participants properly redacted because they provided information to police department). Under this exemption, the University may properly redact the identifying information of the individuals, other than the arrestees, who provided information to the police.\(^5\) See, e.g., Ill. Att'y Gen PAC Req. Rev. Ltr. 23298, issued April 21, 2014 (police department properly redacted names and other identifying information of victims and witnesses who provided information to the department). The University contends that inadvertent identification of the victims and witnesses could result from disclosure of the report even if the victims' names are redacted because the incident occurred in a dormitory amongst individuals who know each other. However, once the University redacts the victims' and third parties' identifying information (under section 7(1)(c), as discussed below) and the identifying information of the non-arrestees who provided information to law enforcement, there is no indication that the report will identify the victims or witnesses to those without prior knowledge of their identities. Therefore, the University did not sustain its burden of demonstrating that the responsive records are exempt from disclosure in their entirety under the asserted section 7(1)(d) exemptions, but it may properly redact names and other discrete information identifying people who provided information to law enforcement under section 7(1)(d)(iv).

**Section 7(1)(c) of FOIA**

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's contention that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Dep't of Pub. Health*, 327 Ill. App. 3d 192, 196 (2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the government agency having charge of the record to prove that standard has been met. *Schessler v. Dep't of Conservation*, 256 Ill. App. 3d 198, 202 (1994).

Illinois courts consider the following factors in determining whether disclosure of information would constitute an unwarranted invasion of personal privacy: "(1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal

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\(^5\) i.e., name, address, telephone number, date of birth, driver's license number, physical description.
privacy, and (4) the availability of alternative means of obtaining the requested information." Nat'l Ass'n of Criminal Def. Lawyers v. Chicago Police Dep't, 399 Ill. App. 3d 1, 13 (2010).

This office has reviewed the responsive records, which detail a crime allegedly committed against two students and the response by law enforcement officials. Information identifying an individual as a victim of a crime constitutes highly personal information; this office has consistently determined that disclosure of the identity of a victim of a criminal offense would constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18980, issued December 18, 2013 ("Information identifying an individual as a victim of a crime is highly personal by its very nature."). Therefore, the University may properly redact the alleged victims' names and identifying information pursuant to section 7(1)(c).

Additionally, this office has consistently determined that disclosure of the identities of third parties who have no direct involvement in an underlying incident but whose names appear incidentally in a police report constitutes an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 26558, issued January 7, 2014, at 3. Accordingly, the University may also properly redact the third party students' identifying information from the responsive records pursuant to section 7(1)(c).

However, the report details the arrests of two individuals. The Attorney General has issued a binding opinion concluding that "arrestees are considered 'essentially public personages' with a 'limited' and 'qualified' right to privacy, 'and the basic facts which identify them and describe generally the investigations and their arrests become matters of legitimate public interest' that are subject to disclosure." Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7 (citing Tennessean Newspaper, Inc. v. Levi, 403 F. Supp. 1318, 1321 (D.C. Tenn. 1975)).

Thus, we turn to the balancing test that the courts have set forth to determine whether disclosure of the reports, with the victims' and witnesses' and third parties' identifying information redacted, would constitute an unwarranted invasion of personal privacy. The requester seeks this information on behalf of a news organization at the University. Accordingly, her interest in disseminating this information aligns with the strong public interest in information about incidents that result in arrests and the manner in which authorities respond to crimes. Yet even with the victims' and witnesses' and third parties' identifying information redacted, disclosure of the responsive records would still pose a moderate invasion of the victims' personal privacy; an individual who is already aware of the victims' identities would be able to glean a modicum of additional information about them and the incident. Although the responsive records involve a matter that is highly personal to the alleged victims, the records do not contain any particularly detailed or graphic depictions of the personal matter. Lastly, there do not appear to be any alternative means of obtaining the requested information. Thus, on balance, the strong interest in the responsive information concerning these arrests outweighs the privacy rights of the
Ms. Jacqueline N. Covey  
Ms. Darcie R. Shinberger  
November 26, 2014  
Page 7

de-identified alleged victims. Therefore, the University did not sustain its burden of demonstrating that the responsive records are exempt from disclosure in their entireties pursuant to section 7(1)(c). However, any characterizations of the alleged victims' reputations or personal appearances may be properly redacted. Such information is highly personal, and the alleged victims' rights to privacy outweigh any public interest in disclosure of that information.

CONCLUSION

In accordance with the conclusions expressed in this letter, we direct the University to disclose the responsive records, subject to the redaction of the victims', witnesses', and third parties' names and other identifying information pursuant to sections 7(1)(d)(iv) and 7(1)(c) of FOIA. The University may also redact "private information" pursuant to section 7(1)(b) (5 ILCS 140/7(1)(b) (West 2012)).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at the Chicago address on the first page of this letter if you have any questions. This letter serves to close this matter.

Very truly yours,

JOSH JONES  
Assistant Attorney General  
Public Access Bureau

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Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 29, 2016

Via electronic mail without enclosure

Via electronic mail with enclosure
Ms. Timberlee Hall
Administrative Specialist and FOIA Officer
McHenry County Sheriff's Office
2200 North Seminary Avenue
Woodstock, Illinois 60098
tahall@co.mchenry.il.us

Re: FOIA Request for Review — 2015 PAC 37687

Dear [Redacted] and Ms. Hall:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that although the McHenry County Sheriff's Office (Sheriff's Office) permissibly redacted certain information in response to a FOIA request submitted by [Redacted], a small portion of a report was improperly redacted.

On September 21, 2015, [Redacted] submitted a two-part FOIA request to the Sheriff's Office seeking copies of all police reports filed in 2015 concerning him and copies of his medical records. On September 24, 2015, the Sheriff's Office provided him with copies of responsive police reports but redacted and withheld certain information pursuant to sections 7(1)(a), 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(c), (1)(d)(iv) (West 2014), as amended by Public Act 99-298, effective August 6, 2015). The Sheriff's Office's response to [Redacted] did not specifically address the part of the request that sought medical records. [Redacted] Request for Review, received on September 24, 2015, contests the information withheld from the police reports and the withholding of his medical records.

On October 6, 2015, this office sent a copy of [Redacted] Request for Review to the Sheriff's Office and asked it to: (1) explain whether it possesses medical records responsive
to the FOIA request; (2) provide unredacted copies of the responsive police reports for our confidential review; and (3) provide a detailed explanation of the factual and legal bases for its assertion of sections 7(1)(a), 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA to withhold information. On October 16, 2015, the Sheriff's Office furnished this office with copies of those records and its written response explaining that any responsive medical records would be in the possession of Correct Care Solutions, which is a medical provider contracted by McHenry County to provide medical care to inmates in the McHenry County Correctional Facility. On October 20, 2015, replied that there is no valid basis for the Sheriff's Office to withhold the responsive medical records. On November 13, 2015, the Sheriff's Office provided with the first 50 pages of the responsive medical records that he had not previously received and agreed to provide him with the remainder upon receipt of the copying fee authorized by section 6(b) of FOIA (5 ILCS 140/6(b) (West 2014)).

**DETERMINATION**

Because the Sheriff's Office resolved the medical records issue by providing with copies of the first 50 pages of his medical records and agreeing to provide him with the remainder upon receipt of the applicable fee, the remaining issue in this Request for Review is whether the Sheriff's Office sustained its burden to redact information from the police reports.

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014); see also Southern Illinoisan v. Illinois Dept. of Public Health, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

**Redaction of Statements Made to Sheriff's Deputies**

The Sheriff's Office redacted from the narrative section of report 15-009998 portions of statements made by two witnesses to Sheriff's Deputies and withheld two handwritten statements signed by the same witnesses. In its response to this office, the Sheriff's Office cited sections 7(1)(d)(iv) and 7(1)(a) of FOIA for those redactions.

Section 7(1)(d)(iv) exempts from disclosure information that would "unavoidably disclose the identity of * * * persons who file complaints with or provide information to * * * law enforcement, or penal agencies[,]" This provision allows law enforcement agencies to protect the anonymity of persons who provide them with information. See, e.g., Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01 (2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department). A witness statement may be withheld in its entirety under section
Ms. Timberlee Hall
January 29, 2016
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7(1)(d)(iv) when disclosure of the contents "would necessarily result in the disclosure of the identity of that source" of information and, therefore, "redaction of the [statements] cannot be meaningfully accomplished." *Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 426 (4th Dist. 1994).

Upon review, this office concludes that the Sheriff's Office permissibly redacted and withheld the witness statements because the disclosure of the information that those individuals provided to the Sheriff's Office would have necessarily revealed their identities. Regardless of whether the Sheriff's Office already knows those individuals' identities, section 7(1)(d)(iv) exempts from disclosure the contents of their statements to the Sheriff's Office. *See, e.g., Ill. Atty Gen. PAC Req. Rev. Ltr. 36029*, issued December 9, 2015, at 3 (noting that a requester's independent knowledge of a witness's identity does not render the section 7(1)(d)(iv) exemption inapplicable). Accordingly, the Sheriff's Office has met its burden of proving that the redacted witness statements are exempt from disclosure under section 7(1)(d)(iv) of FOIA.¹

**Redaction of Information Concerning Injury to Sheriff's Deputy**

The Sheriff's Office also redacted paragraphs four and five from report number 15-010006, which describe an injury to a Sheriff's Deputy, the care the Deputy received for his injury, and follow-up instructions provided to the Deputy. In support of its redactions, the Sheriff's Office relied on section 7(1)(c) of FOIA, which exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

The Public Access Bureau has previously held that an individual's right to privacy in the details of specific injuries outweighs any legitimate public interest in obtaining this information. *Ill. Atty Gen. PAC Pre-AUTH. al d/8793*, issued December 21, 2010, at 2. Accordingly, the Sheriff's Office did not violate FOIA by redacting the portion of paragraph four describing the Deputy's injury and medical instructions. However, the remainder of paragraph four and paragraph five do not contain similarly highly personal information. These portions do not identify a specific injury or specific medical care or instructions provided to the Deputy, but rather general information and administrative steps required by the Sheriff's Office. Section 7(1)(c) of FOIA expressly provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

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¹Because we conclude that the Sheriff's Office properly redacted witness statements from the report pursuant to section 7(1)(d)(iv) of FOIA, we do not need to address whether section 7(1)(a) also applies.
Because the remainder of paragraph four and paragraph five do not reveal highly personal information about the Deputy's medical condition and medical care, the Sheriff's Office improperly redacted that information.

**Other Redactions**

The Sheriff's Office also redacted portions of addresses, phone numbers and dates of birth from the responsive reports. Section 7(1)(b) exempts from disclosure "private information," and section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014), as amended by Public Act 99-78, effective July 20, 2015) defines "private information" to include home addresses and personal telephone numbers. Additionally, the Public Access Bureau has consistently determined that an individual's date of birth can be withheld pursuant to section 7(1)(c) of FOIA, because a birth date is highly personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 23298, issued April 21, 2014, at 2. Accordingly, the redaction of the home addresses, personal phone numbers, and birth dates of individuals mentioned in the report was permissible.

In accordance with this determination, we request that the Sheriff's Office provide with a revised copy of report 15-010006 that discloses paragraph four (other than the description of the specific injury and medical instructions provided to the Deputy) and paragraph five of the narrative. With the copy of this determination that is being provided to the Sheriff's Office, we have enclosed a confidential copy of the narrative from report 15-010006 that reflects the permissible redactions the Sheriff's Office may make to paragraph four.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6437. This letter serves to close this matter.

Very truly yours,

[Signature]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

37687 f 71b proper 71c proper improper 71div proper county
Via electronic mail
Mr. Matt Buedel
Peoria Journal Star
mbuedel@pjstar.com

Ms. Sonni Choi Williams
Interim Corporation Counsel
City of Peoria
419 Fulton Street, Suite 200
Peoria, Illinois 61602
swilliams@peoriagov.org

RE: FOIA Request for Review - 2012 PAC 22982

Dear Mr. Buedel and Ms. Williams:

The Public Access Counselor has received a Request for Review submitted by Mr. Matt Buedel, Staff Reporter, Peoria Journal Star, pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2011 Supp)).

On December 11, 2012, Mr. Buedel submitted a FOIA request to the Peoria Police Department (Department) seeking "the names and ages of all 29 target offenders invited to the Don't Shoot call in on Monday, December 10, 2012." On December 17, 2012, the Department denied Mr. Buedel's request, citing sections 7(1)(a) and 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(a), (d)(i) (West 2012). Section 7(1)(a) of FOIA permits a public body to withhold "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law[.]" Section 7(1)(d)(i) of FOIA exempts from disclosure information that would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request."

1Letter from Matt Buedel, Peoria Journal Star to Martha Hammer, Information Officer, Peoria Police Department (December 11, 2012).
On December 19, 2012, Mr. Buedel submitted to the Office of the Public Access Counselor a Request for Review of the Department's response. On January 22, 2013, this office forwarded a copy of the Request for Review to the Department and asked it to provide copies of the responsive records together with an explanation of its legal and factual basis for asserting the stated exemptions.

On February 8, 2013, the Department furnished this office with the list of names of participants and asserted that the names are exempt under section 7(1)(a) of FOIA pursuant to section 12(4) of the Probation and Probation Officers Act (Act) (730 ILCS 110/12(4) (West 2012)). The Department also asserted that the names are exempt from disclosure under sections 7(1)(b), 7(1)(c) and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(b), (c), (d)(vi) (West 2012)). Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 7(1)(c) of FOIA exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Finally, section 7(1)(d)(vi) exempts from disclosure information that would "endanger the life or physical safety of law enforcement personnel or any other person[.]"

This office forwarded a copy of the Department's response letter to Mr. Buedel on January 25, 2013. On February 21, 2013, Mr. Buedel responded, in pertinent part:

The Don't Shoot program fundamentally relies on those invited to the call-in to return to their group and share the message that gun violence will no longer be tolerated. Those invited to the call-in are required to attend and then told to return to their friends, identify themselves as participants in the program and warn of the consequences of continued violent behavior for the entire gang or group. The program is designed to address this group dynamic in

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4Letter from Sonni C. Williams, Interim Corporation Counsel, City of Peoria to Matt Rogina, Assistant Attorney General, Public Access Burea (February 8, 2013).

the hope that the gangs will learn to "self-police." This reliance on self identification of the participants to their peers, the people most likely to be involved in violent crime with them, puts the individuals in far more danger than any release of information to a media organization.6

Mr. Buedel also asserted that two participants in the program had been publicly identified.7 The Department denied providing participant information to the media or to the press.8 The Department informed us that the program "was not open to the public, it was for invited persons only and everyone who attended was vetted and checked to make sure he/she was on the invitation list prior to going into the meeting."9

**ANALYSIS**

The issue for our review is whether it was permissible for the Department to withhold the names and ages of individuals who participated in the "Don't Shoot Peoria" call-in program. For the reasons stated below, we conclude that the Department has not met its burden of demonstrating that the names and ages of the participants are exempt from disclosure under sections 7(1)(a), 7(1)(c), 7(1)(d)(i) or 7(1)(d)(vi) of FOIA.

**Section 7(1)(a) and the Probation and Probation Officers Act**

First, we address whether the names and ages of participants are exempt from disclosure under the Probation and Probation Officers Act. Section 12(4) of the Probation and Probation Officers Act requires probation officers:

> To preserve complete and accurate records of cases investigated, including a description of the person investigated, the action of the court with respect to his case and his probation, the subsequent history of such person, if he becomes a probationer, during the continuance of his probation, which records shall be open to inspection by any judge or by any probation officer

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7E-mail from Sonni C. Williams, Interim Corporation Counsel, City of Peoria to Matt Rogina, Assistant Attorney General, Public Access Bureau (February 14, 2013).

8E-mail from Sonni C. Williams, Interim Corporation Counsel, City of Peoria to Matt Rogina, Assistant Attorney General, Public Access Bureau (February 22, 2013).
pursuant to order of court, but shall not be a public record, and its contents shall not be divulged otherwise than as above provided, except upon order of court. Emphasis added. 730 ILCS 110/12(4) (West 2010).

This exemption is only applicable to the records in case files concerning individual probationers. The record responsive to this request, however, is simply of a list of the names of persons who participated in a program that is coordinated by the Department. Although a record of a probationer’s participation in the program may also be contained in a probation officer’s file, the list of names in the possession of the Department cannot be deemed to be a record that is exempt under section 12(4) of the Probation and Probation Officers Act. Moreover, that Act has no application to records concerning participants who are on mandatory supervised release (commonly referred to as “parole”), rather than probation. Consequently, section 12(4) of the Probation and Probation Officers Act would not, under any circumstances, exempt the names and ages of parolees from release.

Section 7(1)(c)

Next, we address whether disclosure of the names and ages would result in an unwarranted invasion of privacy for the participants under section 7(1)(c) of FOIA. Section 7(1)(c) exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy * * * ." An "[u]nwarned invasion of personal privacy’ means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c) (West 2012).

The Illinois Supreme Court has held that, for purposes of FOIA, a name is not "personal information" per se. Lieber v. Board of Trustees of Southern Illinois University, 176 Ill.2d 401, 412 (1997). Further, although dates of birth are exempted from disclosure under section 7(1)(b) of FOIA, there is no significant expectation of privacy regarding the disclosure of an individual’s age. (See Ill. Att’y Gen. PAC Pre-Auth. A19225, issued August 26, 2010, at 3.) Moreover, the fact that a person is on parole or is serving a term of probation is a matter of public record. Accordingly, we conclude that the Department has not met its burden of demonstrating that the disclosure of the names and ages of participants would constitute an unwarranted invasion of their personal privacy, for purposes of section 7(1)(c) of FOIA. Moreover, because there is a significant public interest in determining whether participation in this publicly-funded program is succeeding in reducing violent crime in Peoria, we conclude that the public interest in the success of this program would in any event outweigh the detriment that the release of names and ages might have for its participants.
Section 7(1)(d)(i) and 7(1)(d)(vi)

Last, we address whether the disclosure of the names and ages would interfere with an ongoing investigation or result in a threat to the physical safety of the named individuals under sections 7(1)(d)(i) or 7(1)(d)(vi) of FOIA, respectively. The Department has not asserted that the list of the names relates to an ongoing investigation that is being conducted by the Department. Further, the concerns that the Department has noted with regard to possible physical danger that the participants could face if their names are disclosed is purely speculative. Accordingly, this office concludes that the Department has not met its burden of demonstrating that the list of names and ages of participants is exempt from disclosure under section 7(1)(d)(i) or section 7(1)(d)(vi) of FOIA.

Therefore, this office directs the Department to take immediate steps to furnish the list of names of participants in the Don't Shoot Peoria call-in program to Mr. Buedel. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Should you have any questions, please contact me at (312) 814-5383. This correspondence shall serve to close this file.

Very truly yours,

MATT ROGINA
Assistant Attorney General
Public Access Bureau
Mr. Joseph F. Lulves  
Assistant State's Attorney  
Office of the Kane County State's Attorney  
Kane County Courthouse  
100 South Third Street, 4th Floor  
Geneva, Illinois 60134  

RE: FOIA Request for Review – 2014 PAC 30238  

Dear [Redacted] and Mr. Lulves:  

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons that follow, the Public Access Bureau concludes that the Kane County State's Attorney's Office (State's Attorney's Office) improperly redacted and withheld portions of the records responsive to [Redacted] June 11, 2014, FOIA request.  

On June 11, 2014, [Redacted] submitted a FOIA request to the State's Attorney's Office seeking records related to three Village of Hampshire Police Department reports: Nos. 11-04208, 12-01594, and 10-02041. On June 25, 2014, the State's Attorney's Office provided responsive records but withheld certain information citing sections 7(1)(a), 7(1)(b), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(d)(iv) (West 2013 Supp.)). Further, with respect to e-mails concerning these investigations, the State's Attorney's Office's response noted that "Assistant State's Attorney [Aimee] Snow left employment with the State's Attorney's Office. We are working with Kane County IT to recover the emails you have requested, and will forward those as soon as we receive them from Kane Count[y] IT."  

forwarded a copy of Request for Review to the State's Attorney's Office and asked for copies of the withheld records for our confidential review together with a detailed explanation of the factual and legal bases for the asserted exemptions.

On August 11, 2014, provided this office with a copy of the August 5, 2014, supplemental response by the State's Attorney's Office stating that it would be unduly burdensome to produce the requested e-mails involving Ms. Snow because they are stored on tape recovery systems and retrieving them would not be cost effective. The State's Attorney's Office provided a price listing for a data recovery firm's services and recommended direct his request to the Hampshire Police Department. replied by disputing the supplemental response. On August 14, 2014, the State's Attorney's Office responded to this office's July 31, 2014, letter of inquiry, providing copies of both the redacted and unredacted records for our confidential review but declining to further explain the grounds for its partial denial of request. did not submit a written reply.

**DETERMINATION**

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2012); see also *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

**Section 7(1)(a)**

Orders to Expunge

The State's Attorney's Office did not produce any records concerning Hampshire Police report No. 10-02041 citing section 7(1)(a) of FOIA, which allows a public body to withhold "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law[.]" Specifically, the State's Attorney's Office asserted that "[a]ll information concerning Hampshire Police report #10-02041 is barred from production by court order dated December 19, 2013, which specifically ordered expungement." Additionally, the State's Attorney's Office's August 14, 2014, response to this office stated that an order of expungement had been entered in Kane County Circuit Court Case No. 12-CF-33 and 12-CF-208, which involved Hampshire Police report Nos. 11-04208 and 10-02041.

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1Letter from Joseph F. Lulves, Assistant State's Attorney, Office of the Kane County State's Attorney, to (June 25, 2014), at 1.
Section 5.2(b)(1) of the Criminal Identification Act (20 ILCS 2630/5.2(b)(1) (West 2013 Supp.) describes expungement as a process by which "[a] petitioner may petition the circuit court to expunge the records of his or her arrests and charges not initiated by arrest" when certain conditions are satisfied. Pursuant to section 5.2(a)(1)(E) of the Criminal Identification Act (20 ILCS 2630/5.2(a)(1)(E) (West 2013 Supp.)), "[e]xpunge' means to physically destroy the records or return them to the petitioner and to obliterate the petitioner's name from any official index or public record, or both." Further, section 5.2(d)(9)(A)(iii) of the Criminal Identification Act (20 ILCS 2630/5.2(d)(9)(A)(iii) (West 2013 Supp.)) provides that upon entry of an order to expunge, "the court, the Department [of State Police], or the agency receiving such inquiry, shall reply as it does in response to inquiries when no records ever existed."

The State's Attorney's Office submitted copies of the orders to expunge the arrest records in case Nos. 12-CF-208 and 12-CF-33 for this office's review. The court's expungement orders restrict the Clerk of the Circuit Court, the Illinois State Police, and the arresting authority from disseminating the underlying arrest records, providing:

[In response to an inquiry for such records from anyone not authorized by law to access such records, the Arresting Authority, the Department of State Police and the Clerk of the Circuit Court receiving such inquiry shall reply as it does in response to inquiries when no records ever existed.]²

Absent from the expungement orders is any reference to the dissemination of information by the State's Attorney's Office. The orders do not expressly prohibit the State's Attorney's Office from disclosing records relating to the cases pursuant to a FOIA request. Moreover, the orders expressly apply only to arrest records. The State's Attorney's Office declined to provide this office with any explanation for its assertion that all of the records concerning these cases are encompassed by the expungement order. Accordingly, the State's Attorney's Office has failed to sustain its burden of demonstrating by clear and convincing evidence that documents in the possession of the State's Attorney's Office associated with Hampshire Police Report Nos. 10-02041 and 11-04208 are exempt from disclosure under section 7(1)(a) of FOIA.

Report No. 10-02041 (and any information contained in other reports) relating specifically to case No. 12-CF-208, however, concerns a person other than [redacted]. The court, through the issuance of its expungement order, has determined that those documents

² People v. McCoy, Docket No. 12-CF-208 (Circuit Court, Kane County, December 19, 2013) (order granting expungement, ¶D); People v. [redacted], Docket No. 12-CF-33 (Circuit Court, Kane County, July 16, 2014) (order granting expungement, ¶D).
Mr. Joseph F. Lulves  
April 15, 2015  
Page 4

should generally be withheld from the public. Although the expungement order does not expressly apply to the State's Attorney, we conclude that under these circumstances, the disclosure of the police report by the State's Attorney's Office would constitute an unwarranted invasion of the subject's personal privacy. Accordingly, the denial of the report would be permissible under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2013 Supp.)), which exempts from disclosure "information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Accordingly, to protect the privacy interests of the subject, we will treat the denial as having been made under section 7(1)(c). Because the report relating to case No. 12-CF-33 (Report No. 11-04208) concerns the requester, its disclosure to the requester would not be precluded by section 7(1)(c).

Attorney Work Product

The State's Attorney's Office stated that it redacted internal work product under Illinois Supreme Court Rules 201(b) (Ill. S. Ct. R. 201(b) (effective July 30, 2014)) and 412(j) (Ill. S. Ct. R. 412(j) (effective March 1, 2001)), which are State rules under section 7(1)(a) of FOIA. The parameters of the Illinois attorney work product doctrine are set forth in Rule 201(b)(2) (Ill. S. Ct. R. 201(b)(2) (effective July 30, 2014)), which provides: "[m]aterial prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney." Attorney work product is limited to records which "reveal the shaping process by which the attorney has arranged the available evidence" for trial. Monier v. Chamberlain, 35 Ill. 2d 351, 359-60 (1966). A record must be created in anticipation of litigation to constitute work product. See Dalen v. Ozite Corp., 230 Ill. App. 3d 18, 27 (2nd Dist. 1992).

Our confidential review of the redacted and withheld materials confirmed that the majority of the attorney notes, memoranda, and e-mails that were withheld concern attorney theories, mental impressions, and litigation plans. However, several of the withheld e-mails are brief messages relating to correspondence or requests from and do not contain theories, mental impressions, or litigation plans. In addition, the State's Attorney's Office redacted one e-mail from a defense attorney which does not constitute work product. Unredacted copies of these messages should be provided to Otherwise, the attorney work product in the responsive records was properly redacted under section 7(1)(a) of FOIA.
Grand Jury Information

The State’s Attorney’s Office also withheld a grand jury transcript and related documents pursuant to section 7(1)(a) of FOIA based on section 112-6 Code of Criminal Procedure (725 ILCS 5/112-6 (West 2012)), which provides, in pertinent part:

(b) Matters other than the deliberations and vote of any grand juror shall not be disclosed by the State’s Attorney, except as otherwise provided for in subsection (c). ** *

(c)(1) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury, other than its deliberations and the vote of any grand juror, may be made to:

a. a State’s Attorney for use in the performance of such State’s Attorney’s duty; and

b. such government personnel as are deemed necessary by the State’s Attorney in the performance of such State’s Attorney’s duty to enforce State criminal law. (Emphasis added.) ** *

** *

(3) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury may also be made when the court, preliminary to or in connection with a judicial proceeding, directs such in the interests of justice or when a law so directs. 725 ILCS 5/112-6(b), (c)(1), (c)(3) (West 2012).

Pursuant to section 112-6(b) of the Criminal Code, the State's Attorney's Office is specifically prohibited from disclosing the grand jury transcript or other documents that might disclose confidential matters relating to grand jury proceedings. Thus, we conclude that the State's Attorney's Office has sustained its burden of demonstrating that the grand jury records are exempt from disclosure pursuant to section 7(1)(a) of FOIA.

LEADS Data

The State’s Attorney’s Office also redacted information obtained from the Law Enforcement Agencies Data System (LEADS) pursuant to section 7(1)(a) of FOIA. 20 Ill.
Admin. Code 1240.80(d) (2014), last amended at 23 Ill. Reg. 7521, effective June 18, 1999), provides that "LEADS data shall not be disseminated to any individual or organization that is not legally authorized to have access to the information."

The Public Access Bureau has previously determined that information generated from the LEADS database is exempt from disclosure pursuant to section 7(1)(a) of FOIA based on 20 Ill. Admin. Code 1240.80(d). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 12865, issued June 2, 2011. Because dissemination of LEADS data to the general public is specifically prohibited by an administrative rule implementing State law, we conclude that the State's Attorney's Office has sustained its burden of demonstrating that the LEADS information in the responsive records is exempt from disclosure under section 7(1)(a) of FOIA.

**Section 7(1)(b)**

The State's Attorney's Office also redacted portions of the records under section 7(1)(b) of FOIA, which exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as:

- Unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

Having determined that the report concerning case No. 12-CF-208 (10-02041) is exempt from disclosure, the following comments pertain to documents concerning police Report Nos. 11-04208 and 12-01594.

This office concludes that the State's Attorney's Office properly redacted social security numbers, home telephone numbers, home addresses, driver's license numbers, and personal bank account numbers pursuant to section 7(1)(b). In addition, the Public Access Bureau has consistently determined that disclosure of an individual's date of birth would constitute a clearly unwarranted invasion of personal privacy and, therefore, is exempt from disclosure under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2013 Supp.)). See, e.g., Ill. Att'y Gen. PAC Pre-Auth. all15760, issued August 2, 2011.
However, a review of the responsive records also revealed that the State's Attorney's Office redacted gender information, business e-mail addresses, business telephone numbers, a business' insurance policy number and claim number, a check number and check routing number for a check issued by a business, a Federal Employer Identification Number (FEIN), and a Vehicle Identification Number (VIN). Business telephone numbers and business e-mail addresses are not unique identifiers under the definition set forth in section 2(c-5) of FOIA, which expressly defines private information to include personal telephone numbers and e-mail addresses. Likewise, the FEIN number, the check number and similar financial business information, and the insurance information concern businesses rather than individuals and, therefore, do not constitute "personal financial information" that is exempt from disclosure pursuant to section 7(1)(b) of FOIA. Nor is a person's gender a "unique identifier." This office has determined that disclosing a person's gender generally does not constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18274, issued March 27, 2012. Finally, because VIN numbers uniquely identify vehicles rather than individuals, VIN numbers are not exempt under either section 7(1)(b) or 7(1)(c) of FOIA. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 6236, issued March 22, 2010. Because the information discussed above is not exempt under sections 7(1)(b) or 7(1)(c) of FOIA, we request that the State's Attorney's Office disclose this information in the records provided to [redacted].

Section 7(1)(d)(iv)

The State's Attorney's Office also redacted or withheld names and other identifying information citing section 7(1)(d)(iv) of FOIA. Section 7(1)(d)(iv) allows a public body to withhold records that would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[,]" This provision allows police departments to protect the anonymity of persons who provide them with information. See, e.g., Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01 (1st Dist. 2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department).

Our review of the responsive records indicates that the State's Attorney's Office redacted information that would unavoidably disclose the identities of persons who filed complaints with or voluntarily provided information to a law enforcement agency. [redacted] has indicated in telephone conversations with an Assistant Attorney General in the Public Access Bureau that he knows the identities of the individuals in question; however, a requester's independent knowledge of an informant's or a complainant's identity does not render section 7(1)(d)(iv) inapplicable. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 23372, issued August 21, 2013, at 3. Because disclosure of the information redacted pursuant to section 7(1)(d)(iv) would unavoidably disclose the identities of persons who filed complaints with or provided information
to a law enforcement agency, we conclude that the Department did not improperly redact that information under section 7(1)(d)(iv) of FOIA.

**Section 3(g)**

With respect to the State's Attorney's Office's assertion that producing the e-mails of a former Assistant State's Attorney would be unduly burdensome, section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012)) provides:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

Additionally, section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012)) provides:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. * * * A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A **public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).** (Emphasis added.)

Mr. Joseph F. Luves submitted his FOIA request to the State's Attorney's Office by e-mail on June 11, 2014. The State's Attorney's Office responded on June 25, 2014, indicating that it was working with the Kane County information technology staff to recover emails from former
Assistant State's Attorney Snow, and would provide them as soon it received them. On August 5, 2014, the State's Attorney's Office provided a supplemental response asserting that retrieval of the requested e-mails from the county's tape recovery systems would be unduly burdensome.

Based on the available information, the State's Attorney failed to issue a complete response, extend its time for response, or obtain an agreement in writing with [REDACTED] to further extend the response within 5 business days after receiving the request on June 11, 2014. Because the State's Attorney failed to issue a timely response to [REDACTED] FOIA request, section 3(d) of FOIA expressly precludes the State's Attorney from treating any portion of the request as unduly burdensome under section 3(g). Therefore, we direct the State's Attorney to provide [REDACTED] with copies of the responsive e-mails, subject to permissible redactions under section 7 of FOIA. Because the State's Attorney's Office did not provide a timely response to that portion of the request, section 3(d) precludes the State's Attorney's Office from imposing a fee for these copies.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (217) 782-1699 if you have questions or would like to discuss this matter. This letter serves to close this matter.

Very truly yours,

BENJAMIN REED
Assistant Attorney General
Public Access Bureau

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3 Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012)) provides that the "person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties."
March 16, 2012

PUBLIC ACCESS OPINION 12-006
(Request for Review 2011 PAC 18379)

FREEDOM OF INFORMATION ACT:
Disclosure of Records Pertaining to
Arrests and Police Reports

Mr. Bill Dwyer, Staff Writer
Sun-Times Media/Pioneer Press
1010 Lake Street, Suite 104
Oak Park, Illinois 60301

Ms. Darlene Pugh
Freedom of Information Officer
Hillside Police Department
425 Hillside Avenue
Hillside, Illinois 60162-1215

Dear Mr. Dwyer and Ms. Pugh:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 120/9.5(f) (West 2010), as amended by Public Act 97-579, effective August 26, 2011). For the reasons discussed below, we conclude that the Village of Hillside (Village) violated section 3 of FOIA (5 ILCS 140/3 (West 2010)) by withholding police reports concerning an incident in which a public official was arrested.

BACKGROUND

On January 18, 2012, Mr. Bill Dwyer, a reporter for the Sun-Times Media/Pioneer Press submitted a FOIA request to the Village seeking "all police incident reports related to Emanuel 'Chris' Welch between November 1, 2001, and March 30, 2002[,] "records of"[a]ll 911 calls received between November 1, 2001 and March 30, 2002 related to reported batteries
of [a] woman," and "any records of police and/or fire paramedic assistance to a battered woman" for the same time period.¹

On January 23, 2012, the Village's Police Department (Department) denied the FOIA request in its entirety pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011),² which exempts personal information if disclosure would constitute an unwarranted invasion of personal privacy. However, the Department did not provide a detailed factual basis or any explanation for its assertion of section 7(1)(c), as required by section 9(a) of FOIA (5 ILCS 140/9(a) (West 2010)). On February 2, 2012, Mr. Dwyer requested that the Public Access Counselor review the Department's denial of his FOIA request.

On February 6, 2012, the Public Access Bureau forwarded to the Department a copy of the Request for Review and requested that the Department provide copies of the records that were withheld, together with a detailed explanation of the basis for its assertion that those records are exempt under section 7(1)(c). In its letter, the Public Access Bureau also requested that the Department "clarify whether any individual was arrested or charged in connection with the incident or incidents documented in the records."³

On February 14, 2012, the Department responded to the Public Access Bureau by providing un-redacted copies of a police incident report and supplemental reports, together with a written explanation of its assertion of section 7(1)(c). The Department's response letter indicated that "[t]here are no 911 tapes available for this incident and there was no Fire Paramedic[ ] assist involved in this incident. This is the only incident involving the individual mentioned" in the FOIA request for the relevant time frame.⁴ The Department's FOIA officer also stated that "[t]he fact that this individual is a political figure has no bearing in my decision for denying this request. The decision was made strictly on the basis of the release of personal information that need not be released to the public[.]" According to the Department, its investigation of the underlying incident was "closed in 2002 with no arrests and no complaints

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³Letter from Steve Silverman, Assistant Attorney General, Public Access Bureau, to Darlene Pugh, Freedom of Information Officer, Hillside Police Department (February 6, 2012).

⁴Letter from Darlene Pugh, Hillside Police FOIA Officer, Village of Hillside, to Steve Silverman, Assistant Attorney General, Public Access Bureau (February 14, 2012).
signed. In a separate response letter clearly identified by the Department as "Attorney General Copy, Not to Release[,]" the Department provided additional information to explain its basis for asserting the section 7(1)(c) exemption. We have considered that additional information, but are prohibited from describing it in this binding opinion pursuant to section 9.5(c) of FOIA (5 ILCS 120/9.5(c) (West 2010), as amended by Public Act 97-579, effective August 26, 2011) ("To the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of this Act, the Public Access Counselor shall not further disclose that information").

On February 28, 2012, a managing editor for the Sun-Times Media/Pioneer Press replied to the Department's response to the allegations in the Request for Review by emphasizing that Mr. Welch is a longtime public figure who was a member of the School Board at the time of the incident and currently serves as Board president, and that he is also a candidate for election to the General Assembly:

Mr. Welch has placed himself in the public eye. We believe that Welch's expectation of privacy is superseded by his status as [a] public official and public figure – both at the time of the incident and today – and that the public's right to know should take precedence. Moreover, our request bears on the performance of public duties by officers of the Hillside Police Department and particularly on important public concerns over whether favoritism influenced their response to this incident.

The reply also indicated that the newspaper welcomes "the redaction of any name(s) or information that identifies the victim(s). We are only interested in the report as it relates to Mr. Welch."

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5Letter from Darlene Pugh, Hillside Police FOIA Officer, Village of Hillside, to Steve Silverman, Assistant Attorney General, Public Access Bureau (February 14, 2012).

6E-mail from Jennifer Clark, Managing Editor, Sun Times Media/Pioneer Press, to Steve Silverman, Assistant Attorney General, Public Access Bureau (February 28, 2012).

7E-mail from Jennifer Clark, Managing Editor, Sun Times Media/Pioneer Press, to Steve Silverman, Assistant Attorney General, Public Access Bureau (February 28, 2012).
ANALYSIS

All public records in the possession or custody of a public body are presumed to be open to inspection and copying. 5 ILCS 140/1.2 (West 2010). Section 3 of FOIA provides, in pertinent part:

(a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act. * * *

(b) Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2010).

Section 2.15 of FOIA

We have reviewed copies of the records in question, which contradict the Department's characterization of the underlying incident in one critical aspect: the narrative of the incident report plainly states that Mr. Welch was taken into custody by police officers. Consequently, it must initially be determined whether Mr. Welch's detention constituted an "arrest" that triggered the disclosure requirements of section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2010)), which provides:

Arrest reports. The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest, notwithstanding the time limits otherwise provided for in Section 3 of this Act:
(i) information that identifies the individual, including the name, age, address, and photograph, when and if available;
(ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the
individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

Unambiguous statutory language should be interpreted in accordance with its plain meaning. *People v. Davis*, 199 Ill. 2d 130, 135 (2002). When terms used in a statute have acquired a technical meaning in the law, they will be given their technical meaning if that is the context in which they are employed. *Stockton v. Oldenburg*, 305 Ill. App. 3d 897, 903-904 (4th Dist. 1999); see *Galowich v. Beech Aircraft Corp.*, 92 Ill. 2d 157, 165-166 (1982). The term "arrest" is such a term.

*Black's Law Dictionary* defines "arrest" as a "seizure or forcible restraint" and the "taking or keeping of a person in custody by legal authority, esp. in response to a criminal charge." *Black's Law Dictionary* 104 (7th ed. 1999). Illinois courts have distinguished an arrest from a brief, involuntary detention that does not require probable cause under the fourth amendment to the United States Constitution. *People v. Jackson*, 96 Ill. App. 3d 1057, 1059 (1st Dist. 1981) ("The elements of an arrest are: (1) the authority to arrest; (2) the assertion of that authority with the intent to arrest; and (3) the restraint of the person arrested"); see also *People v. Williams*, 303 Ill. App. 3d 33, 40 (1st Dist. 1999) ("In determining whether an arrest has occurred, the court must determine whether a reasonable person, innocent of any crime, would have believed that he was not free to leave"). In *People v. Jackson*, 348 Ill. App. 3d 719, 728-729 (1st Dist. 2004), the court stated that in deciding whether an arrest occurred, it must consider the "totality of the circumstances," including:

1. the time, place, length, mood and mode of the encounter between the defendant and the police;
2. the number of police officers present;
3. any indicia of formal arrest or restraint, such as the use of handcuffs or drawing of guns;
4. the intention of the officers;
5. the subjective belief or understanding of the defendant;
6. whether defendant was told he could refuse to accompany police;
7. whether the defendant was transported in a police car;
8. whether the defendant was told he was free to leave;
9. whether the defendant was told he was under arrest; and
10. the language used by officers.

Based on the confidential information in the police incident report provided to this office, we conclude, contrary to Ms. Pugh's statement,⁸ that the police did take Mr. Welch into

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⁸Letter from Darlene Pugh, Hillside Police FOIA Officer, to Steve Silverman, Assistant Attorney General, Public Access Bureau (February 14, 2012).
custody and arrest him on January 2, 2002, notwithstanding that he was released from custody the same day, no criminal charges were filed, and it appears that he never reached the point of being processed in connection with this arrest.

Section 7(1)(c) and Section 2.15 of FOIA

Section 7(1)(c) of FOIA exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

The requirements of section 2.15(a) of FOIA demonstrate that the General Assembly has recognized a strong public interest in the disclosure of information concerning arrests that outweighs an arrestee's right to privacy. Ill Att'y Gen. Pub. Acc. Op. No. 11-001, issued February 18, 2011. Because Mr. Welch was arrested, the information referenced in subsection (i) and (ii) of section 2.15(a) of FOIA relating to his arrest is subject to disclosure. Information referenced in the remaining subsections of section 2.15(a) may be withheld only if "disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility." 5 ILCS 140/2.15(c) (West 2010). The Department asserted in response to the allegations in the Request for Review that its investigation is closed, and there is no indication that disclosure of the information would endanger any individual or compromise the security of any correctional facility. Accordingly, the categories of information listed in section 2.15(a) of FOIA must also be disclosed to the requester. Because the disclosure of this information is governed by the more specific provisions of section 2.15 of FOIA, it may not be withheld pursuant to the general provisions of section 7(1)(c) of FOIA. See generally Murray v. Chicago Youth Center, 224 Ill. 2d 213, 233 (2007).

With respect to the remaining information contained in the incident reports, interpretations of similar provisions of the federal Freedom of Information Act are instructive in balancing Mr. Welch's right to privacy against the public interest in disclosure. Of particular relevance are analyses of 5 U.S.C. § 552(b)(7)(c) (5 U.S.C. § 552(b)(7)(c) (2006), as amended by Pub. L. 111-83, Title V, § 564(b), effective Oct. 28, 2009), which exempts from disclosure

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9Although not controlling, federal precedent may be considered in construing the Illinois FOIA because both statutes promote full disclosure of public records subject only to limited exceptions. See Margolis v. Director, Illinois Dept. of Revenue, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).
"records or information compiled for law enforcement purposes, but only to the extent that" disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

Under the federal FOIA, arrestees are considered "essentially public personages" with a "limited" and "qualified" right to privacy, "and the basic facts which identify them and describe generally the investigations and their arrests become matters of legitimate public interest" that are subject to disclosure. *Tennessean Newspaper, Inc. v. Levi*, 403 F.Supp. 1318, 1321 (D.C.Tenn. 1975). There also is a strong public interest in information that sheds light on the manner in which law enforcement officials perform their public duties. *See Lissner v. United States Customs Service*, 241 F.3d 1220, 1223 (9th Cir. 2001) (information that " sheds light on the propriety" of a federal law enforcement agency's handling of an incident in which two police officers were arrested and fined "raises a cognizable public interest under the federal FOIA"); *see also Hammons v. Scott*, 423 F. Supp. 625, 628 (N.D. Cal. 1976) (holding that disclosure of records of arrests that did not result in criminal charges does not violate a subject's constitutional right to privacy).

Here, the information at issue may be highly personal to Mr. Welch, but his right to privacy is significantly diminished in this instance by his status as an arrestee. There also is a strong public interest in arrests in general, as demonstrated by the General Assembly's enactment of section 2.15(a). Under these circumstances, the public interest in disclosure significantly outweighs the subject's right to privacy. Therefore, disclosure of the remaining portions of the records in question would not constitute an unwarranted invasion of personal privacy within the scope of section 7(1)(c).

By failing to disclose the records in question pursuant to Mr. Dwyer's FOIA request, the Department has violated section 3 of the Act. The Department is obligated to provide Mr. Dwyer with copies of the records, subject only to appropriate redactions for "private information" under section 7(1)(b) (5 ILCS 140/7(1)(b) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011). Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2010), as amended by Public Act 97-579, effective August 26, 2011) defines "private information" as:

> unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as
otherwise provided by law or when compiled without possibility of attribution to any person.

As previously noted, Mr. Dwyer and Ms. Clark have specifically stated that the Department is free to redact any name(s) or information that identifies the victim(s).

FINDINGS AND CONCLUSIONS

After full review and giving due consideration to the arguments of the parties, the Public Access Counselor's findings, and the applicable law, the Attorney General finds that:

1) On January 18, 2012, Mr. Dwyer submitted a FOIA request to the Village seeking copies of police incident reports related to Emanuel 'Chris' Welch between November 1, 2001, and March 30, 2002, and records of 911 calls and police and paramedic calls related to a battered woman for the same time period.

2) On January 23, 2012, the Village's Police Department denied Mr. Dwyer's request pursuant to section 7(1)(c) of FOIA.

3) On February 2, 2012, the Public Access Counselor received Mr. Dwyer's Request for Review of the denial of his FOIA request. Mr. Dwyer's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA. 5 ILCS 140/9.5(a) (West 2010), as amended by Public Act 97-579, effective August 26, 2011. Therefore, the Attorney General may properly issue a binding opinion with respect to the disclosure of the requested records.

4) On February 6, 2012, the Public Access Bureau determined that action was warranted and issued a letter to the Department requesting that it provide for review copies of the records in question, together with a detailed summary for the assertion of the section 7(1)(c) exemption, including a clarification as to whether any individual was arrested in connection with the underlying incident.

5) On February 14, 2012, the Department responded by providing the Public Access Counselor with a detailed summary of its reasons for the assertion of section 7(1)(c) together with copies of the records in question.

6) The Department stated in its response that no one was arrested in connection with the incident documented in the records. Based upon this office's review of the records, however, we conclude that Mr. Welch was, as a matter of law, arrested in connection with the underlying incident.
7) Because Mr. Welch was arrested, and because the Department has stated that its investigation is closed and there is no indication that disclosure of information relating to his arrest would endanger any individual or compromise the security of any correctional facility, the information referenced in section 2.15(a) of FOIA is not exempt from disclosure.

8) Further, the Department failed to demonstrate by clear and convincing evidence that any other information in the incident report is exempt from disclosure pursuant to section 7(1)(c).

Therefore, it is the opinion of the Attorney General that the Department violated FOIA by improperly denying Mr. Dwyer's, January 18, 2012, FOIA request for copies of police incident reports related to Emanuel 'Chris' Welch between November 1, 2001, and March 30, 2002. Accordingly, the Department is directed to take immediate and appropriate action to comply with this opinion by furnishing Mr. Dwyer with copies of those records, subject only to appropriate redactions under sections 7(1)(b) of FOIA. Under section 9.5(f) of FOIA, the Department must either immediately comply with this binding opinion or initiate administrative review under section 11.5 of FOIA (5 ILCS 140/9.5 (West 2010).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 et seq. (West 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Bill Dwyer as defendants. See 5 ILCS 140/11.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:
Michael J. Luke
Counsel to the Attorney General
PUBLIC ACCESS OPINION 16-002
(Request for Review 2015 PAC 38303)

FREEDOM OF INFORMATION ACT:
Disclosure of Post-mortem Photographs
to the Executor of the Decedent's Estate

Mr. Larry Young
804 Newton Avenue
Johnston City, Illinois 62951

Master Sergeant Kerry Sutton
Legal Counsel
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703

Dear Mr. Young and Master Sergeant Sutton:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f)
of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons
discussed below, this office concludes that the Illinois State Police (ISP) violated FOIA by
improperly withholding post-mortem photographs requested by the decedent's father and
executor of her estate.

BACKGROUND

On August 12, 2015, Mr. Larry Young submitted a FOIA request to ISP seeking
records pertaining to the death of his daughter, Molly Young. Among other things, the FOIA
request sought "[a]ll crime scene photographs, autopsy photographs, images and trajectory diagram[s]."¹

On September 30, 2015, ISP responded to Mr. Young’s August 12, 2015, FOIA request by providing certain information, but redacted or withheld portions of the responsive records pursuant to sections 7(1)(b)² and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2014), as amended by Public Act 99-298, effective August 6, 2015).³ ISP withheld the autopsy photographs and crime scene photographs in their entireties.⁴

On October 26, 2015, Mr. Young submitted a Request for Review to the Public Access Bureau asserting, in part, that "[a]s father and executor of Molly's estate [he is] the only requestor that has the legal right to all the crime scene photos/videos and autopsy photos/videos including the graphic photos."⁵ On November 4, 2015, the Public Access Bureau forwarded a copy of the Request for Review to ISP and asked ISP to provide a detailed explanation of its legal and factual bases for withholding those records.⁶ ISP did not receive this office’s November 4, 2015, correspondence, and a copy of the letter was forwarded to ISP on November 18, 2015.⁷ On November 30, 2015, ISP responded and stated, in pertinent part:

¹FOIA request from Larry Young to Lieutenant Steve Lyddon, Illinois State Police, Freedom of Information Officer (August 12, 2015). As both Mr. Young and ISP used the term "crime scene" to refer to the scene of Ms. Young’s death, this office uses that term in this opinion without implying any conclusion by this office as to the circumstances of Ms. Young’s death. The Public Access Counselor’s authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 et seq. (West 2014)). See 15 ILCS 205/7(c)(3) (West 2014).

²ISP’s assertion of section 7(1)(b) applied to redactions in other records provided to Mr. Young that are not at issue in this opinion.

³Letter from Aaron Harris, Esq., FOIA Officer, Illinois State Police, to Larry Young (September 30, 2015).

⁴In response to a previous Request for Review, this office had determined that ISP failed to sustain its burden of demonstrating that Mr. Young was not entitled to those records and directed ISP to provide them to him. Ill. Att’y Gen. PAC Req. Rev. Ltr. 28651, issued June 29, 2015. ISP did not comply with that non-binding determination.

⁵Letter from Larry Young to Josh Jones, Public Access Bureau, Office of the Attorney General (October 26, 2015).


⁷E-mail exchange between Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, and Master Sergeant Kerry Sutton, Legal Counsel, Illinois State Police (November 18, 2015).
18) ** * Graphic photos of the crime scene and autopsy are exempt per the AG's opinions found in the Law Enforcement FOIA guide provided by the Public Access Counselor's office. Those opinions state:

- Graphic photographs and descriptions of alleged offenses, such as sex crimes, may frequently be withheld under 7(1)(c). See 2010 PAC 7791 (Ill. Att'y Gen. PAC Pre-Auth. al7791, issued June 29, 2010, at 2) and 2010 PAC 9091 and 9164 (Ill. Att'y Gen. PAC Pre-Auth. al9091, 9164 issued August 23, 2010, at 2)

Additionally, please see United States Supreme court case "National Archives and Records Administration v. Favish et al., 541 US 157 (2004)."[8]

On December 4, 2015, this office forwarded a copy of ISP's response to Mr. Young. On December 14, 2015, Mr. Young replied by citing this office's previous determination, in an earlier Request for Review, that ISP had improperly withheld the crime scene and autopsy photographs from him. By telephone on February 3, 2016, Mr. Young informed the Public Access Bureau that he wished to narrow the scope of this Request for Review to ISP's denial of the crime scene photographs and autopsy photographs.[9]

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On December 28, 2015, this office properly extended the time in which to issue a binding opinion by 30 business days, to February 10, 2016, pursuant to section 9.5(f) of FOIA.  

**ANALYSIS**

"It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible in compliance with [FOIA]," 5 ILCS 140/1 (West 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

Section 7(1)(c) of FOIA exempts from disclosure:

> Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, **unless the disclosure is consented to in writing by the individual subjects of the information.**

"Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. (Emphasis added.)

A public body’s assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers’ Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the records to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

Because an individual’s personal privacy interest ceases to exist upon death, Ms. Young does not have a privacy interest in the withheld photographs. See Ill. Att’y Gen. Pub.

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In National Archives, the United States Supreme Court analyzed whether the Federal FOIA's personal privacy exemption13 permitted a public body to withhold from a non-family member the death scene images of President Clinton's deputy counsel, Mr. Vincent Foster, who was officially determined to have committed suicide. Mr. Foster's surviving family members objected to disclosure of the photographs. National Archives, 541 U.S. at 160-61, 166 124 S. Ct. at 1574, 1577-78. The Court noted:

The family does not invoke Exemption 7(C) on behalf of Vincent Foster in its capacity as his next friend for fear that the pictures may reveal private information about Foster to the detriment of his own posthumous reputation or some other interest personal to him. If that were the case, a different set of considerations would control. Foster's relatives instead invoke their own right and interest to personal privacy. They seek to be shielded by the exemption to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility, not for the sake of the deceased. National Archives, 541 U.S. at 166, 124 S. Ct. at 1577.

In light of the applicable precedents, the Court "conclude[d] from Congress' use of the term 'personal privacy' that it intended to permit family members to assert their own privacy rights against public intrusions long deemed impermissible under the common law and in our cultural traditions." National Archives, 541 U.S. at 167, 124 S. Ct. at 1578. Thus, the Court held "that FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images." National Archives, 541 U.S. at 170, 124 S. Ct. at 1579. Because the requester did not demonstrate that the public interest in disclosure of the photographs outweighed the objecting family members' privacy interests, the Court held that providing him with the responsive photographs would constitute an unwarranted invasion of the objecting family members' personal privacy. National Archives, 541 U.S. at 174-75, 124 S. Ct. at 1581-82.

13 5 U.S.C. § 552(b)(7)(C) (2002). The exemption allowed federal government agencies to withhold "records or information compiled for law enforcement purposes[ ] if their production "could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]"
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Similarly, in III. Att'y Gen. Pub. Acc. Op. No. 10-003, at 1-2, the requesters who sought autopsy and other post-mortem images were not related to the decedents. Further, the surviving family members in the matters addressed by the binding opinion also strongly objected to disclosure of the post-mortem photographs of the decedents. Based on those objections, the Attorney General concluded that the public body "sustained its burden of demonstrating that the release of the post-mortem photographs of the bodies of [the decedents] would constitute a clearly unwarranted invasion of the surviving family members' personal privacy." III. Att'y Gen Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 11.

In contrast, Mr. Young has expressly requested copies of the photographs of his daughter. Ms. Young was not married, and Mr. Young has been appointed as the executor of her estate. The circumstances here are therefore distinctly different from those addressed in National Archives and III. Att'y Gen. Pub. Acc. Op. No. 10-003, both of which concerned requests by non-family members. Clearly, an individual may consent to the disclosure of information in which he or she has a personal privacy interest. ISP has not articulated a legal rationale that justifies withholding personal information concerning Ms. Young from her father, including her death-scene and autopsy photographs. Accordingly, this office concludes that ISP has not sustained its burden of demonstrating by clear and convincing evidence that the responsive photographs are exempt from disclosure to Mr. Young.

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14E-mail from Richard Velázquez, Special Counsel to the President, Office of the President, Cook County Board of Commissioners, to Matthew C. Rogina, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (September 15, 2010).

15None of the Public Access Counselor's pre-authorization letters that ISP cited in its response to this office involved a FOIA request seeking information concerning one of the requester's own family members. Instead, all of the requests were submitted by third parties who did not assert that they had the consent of the surviving family members to obtain personal information concerning the decedents.

16On February 28, 2015, Mr. Young provided this office with a document filed with the Circuit Court of the First Judicial Circuit on October 25, 2012, which states that he had been appointed Independent Administrator of his daughter's estate. Letters of Office - Decedent's Estate, In the Matter of the Estate of Molly Marie Young, Deceased, No. 12-P-88 (Circuit Court, Jackson County). Under the law, "[t]he executor or the administrator with the will annexed shall administer all the estate and intestate estate of the decedent." 755 ILCS 5/6-15 (West 2014).

17This office notes that providing personal information concerning Ms. Young to the requester does not mean that ISP must provide the same information to other requesters who are unrelated to Ms. Young. Mr. Young has consented to the disclosure of personal information concerning his daughter to him, not to others. Mr. Young has requested that ISP not release further personal information concerning Ms. Young to the general public.
FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On August 12, 2015, Mr. Larry Young submitted a FOIA request to the Illinois State Police seeking records relating to the death of his daughter, Molly Young. Among other things, the request sought "[a]ll crime scene photographs, [and] autopsy photographs" relating to Ms. Young's death.

2) On September 30, 2015, ISP denied the request for those photographs, citing section 7(1)(c) of FOIA, which exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[…]." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

3) On October 29, 2015, the Public Access Bureau received Mr. Young's October 26, 2015, Request for Review letter in which he disputed the denial of his request for those photographs. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)).

4) On November 4, 2015, and November 18, 2015, the Public Access Bureau sent a copy of Mr. Young's Request for Review to ISP and asked it to provide a detailed explanation of the legal and factual bases for withholding those photographs. On November 30, 2015, the ISP responded to this office.

5) This office forwarded a copy of ISP's response to Mr. Young on December 4, 2015. On December 18, 2015, by a letter dated December 14, 2015, this office received Mr. Young's reply to ISP's response.

6) On December 28, 2015, this office properly extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) ISP has failed to demonstrate by clear and convincing evidence that the photographs in question are exempt from disclosure to Mr. Young pursuant to section 7(1)(c) of FOIA. In these circumstances, Mr. Young, as the father of the decedent and the executor of her estate, has consented through his FOIA request to the disclosure to him of personal information
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concerning his daughter. He has therefore waived his personal privacy interest in withholding the photographs from dissemination to him. ISP has not articulated a legal rationale that would justify withholding personal information concerning Molly Young from her father, including her death-scene and autopsy photographs.

Therefore, it is the opinion of the Attorney General that ISP improperly denied Mr. Young's Freedom of Information Act request for crime scene photographs and autopsy photographs in violation of the requirements of the Act. Accordingly, ISP is directed to take immediate and appropriate action to comply with this opinion by providing Mr. Young with copies of those photographs.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 et seq. (West 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Larry Young as defendants. See 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN  
ATTORNEY GENERAL

By:

Michael J. Luke  
Counsel to the Attorney General
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 23, 2012

Shawnee Correctional Center
6665 Route 146 East
Vienna, Illinois 62995

Officer Jack Enter
Assistant FOIA Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

RE: FOIA Pre-Authorization Request - 2011 PAC 12784

Dear [Redacted] and Officer Enter:

The Public Access Bureau has completed its analysis of a Request for Review from [Redacted] concerning the Chicago Police Department’s denial of his request for information under the Freedom of Information Act (FOIA) (5 ILCS 140/1 et seq. (West 2010)). [Redacted] FOIA request sought copies of the photographic lineup in RD #HR-343091, which is a criminal matter in which [Redacted] was accused of burglary.

The Department originally notified [Redacted] in writing that he could receive copies of the requested photographs upon payment of the appropriate fee. After [Redacted] mother sent the Department a check for the fee, however, the Department returned the check and stated in the accompanying letter that the photographs were exempt from disclosure under section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2010)). Section 7(1)(d)(i) exempts records when disclosure would “interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request.” The Department asserted that release of the lineup photographs would interfere with the prosecution of [Redacted] for burglary. After the Department asserted this exemption and returned the check for the photographs, [Redacted] was convicted of burglary.
DETERMINATION

Now that the burglary prosecution of [redacted] has been concluded, there is no longer any potential basis for the Department to assert that the lineup photographs are exempt from disclosure under section 7(1)(d)(i). Accordingly, those photographs should be released to [redacted] upon payment of the appropriate fee. To the extent that the lineup photographs show images of individuals who were not charged with any crime, and who were not Department employees, their images may be redacted or blacked out under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2010)). See Ill. Att’y Gen. PAC Pre-Auth. d113215, issued August 12, 2011. Section 7(1)(c) exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information."
The provision defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

This office has previously determined that names and images of lineup participants who were not charged with a crime generally are exempt under section 7(1)(c) because disclosure of their names and images would result in an unwarranted invasion of personal privacy. See Ill. Att’y Gen. PAC Pre-Auth. d113215, issued August 12, 2011; Ill. Att’y Gen. PAC Req. Rev. Ltr. 13176, issued June 27, 2011; Ill. Att’y Gen. PAC Pre-Auth al8440, issued July 20, 2010. If the lineup participants are Department officers or employees, however, their images are not exempt under section 7(1)(c) because that provision states, "The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." Accordingly, the images of lineup participants who were not charged with a crime may be redacted or blacked out only if they were not officers or employees of the Department.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-2770 if you have any questions or would like to discuss the matter.

Very truly yours,

[Redacted]

JOHN SCHMIDT
Senior Assistant Attorney General
Public Access Bureau

12784 rfr f pb ex improper pd
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 25, 2016

[Redacted]
P.O. Box 089002
Chicago, Illinois 60608

Via electronic mail
Mr. Ralph Price
General Counsel
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653
pacola@chicagopolice.org

RE: FOIA Request for Review – 2015 PAC 37628; CPD No. 15-2804

Dear [Redacted] and Mr. Price:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons discussed below, this office concludes that the Chicago Police Department (CPD) improperly withheld certain information responsive to [Redacted] May 11, 2015, FOIA request.

On that date, [Redacted] submitted a five-part FOIA request to CPD seeking copies of records relating to case 14-CR-16286. Specifically, he requested: (1) felony complaints; (2) arrest reports; (3) supplementary reports; (4) 911 call/event query; and (5) any written and/or oral statements signed or unsigned by police, witnesses, or himself. On August 13, 2015, CPD responded by providing [Redacted] with a copy of the arrest report, but redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(vi) (West 2014)). CPD also stated that it withheld the supplementary reports and written/oral statements in full under sections 7(1)(d)(i), 7(1)(d)(iii), 7(1)(d)(iv), and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(i), (1)(d)(iii), (1)(d)(iv), (1)(d)(vi) (West 2014)). Additionally, CPD asserted that it did not possess responsive felony complaints and that it did not maintain the 911 call records, as the City of Chicago's Office of Emergency Management and Communications is the public body that maintains 911 call records. On September 17, 2015, [Redacted] filed this
Request for Review contending that CPD improperly responded to parts 1, 2, 3, and 5 of his request.¹

On September 25, 2015, this office forwarded a copy of the Request for Review to CPD and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation for the exemptions it asserted. On October 22, 2015, CPD provided this office with those records and a written response. CPD's response was forwarded to [REDACTED] he did not reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2014).

Section 7(1)(b) of FOIA

Under section 7(1)(b), "[p]rivate information" is exempt from disclosure "unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)) defines "private information" as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added.)

CPD stated that [REDACTED] arrest report was redacted pursuant to section 7(1)(b) of FOIA. Personal telephone numbers, employee identification numbers, and home addresses were redacted. That information is specifically defined as "private information" under the plain language of section 2(c-5) of FOIA. Accordingly, we conclude that CPD did not improperly redact this information under section 7(1)(b).

¹This office initially opened Request for Review 2015 PAC 37617 with respect to the same request; that file has been closed as duplicative of this one.
Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Further, section 7(1)(c) states that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

CPD's response to this office did not identify which portions of the responsive records CPD redacted pursuant to section 7(1)(c). Based on our review of the records, it appears that the information that CPD may have redacted pursuant to section 7(1)(c) is dates of birth, victims' names, the name of a representative of the State's Attorney's Office, the names of hospitals where victims were treated, descriptions of victims' injuries, and a victim's gender and race.

As to the dates of birth, this office has consistently determined that the disclosure of an individual's date of birth would constitute a clearly unwarranted invasion of personal privacy, and, therefore, that dates of birth are exempt from disclosure under section 7(1)(c) of FOIA. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18980, December 18, 2013, at 4. Accordingly, CPD did not improperly redact a date of birth.

This office has also consistently determined that the disclosure of the identity of a victim of an alleged criminal offense would constitute a clearly unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18980, issued December 18, 2013, at 4 ("Information identifying an individual as a victim of a crime is highly personal by its very nature."). Accordingly, CPD did not improperly redact the information identifying a private citizen who reportedly was a victim of an offense. However, CPD improperly redacted the names of CPD officers who sustained injuries or were otherwise involved in the arrest, as the officers' names bear on their public duties as public employees and therefore are excluded from the definition of unwarranted invasion of personal privacy in section 7(1)(c) of FOIA. For the same reason, CPD improperly redacted the name of a representative of the State's Attorney's Office.
As for the names of hospitals where victims were treated, this office has previously determined that the name of a hospital is not personal information, and thus disclosure would not cause an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Pre-Auth. d112961, issued March 22, 2011, at 2. Additionally, this office has previously determined that the disclosure of general information concerning a reported injury – as opposed to a specific diagnosis or type of medical treatment – would not constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Pre-Auth. d114152, issued May 25, 2011, at 2. The arrest report provides brief, general, non-graphic descriptions of injuries. CPD has not sustained its burden of demonstrating that disclosure of this information would cause an unwarranted invasion of personal privacy.

Finally, CPD redacted a victim's race and gender. This office has repeatedly determined that one's race is highly personal information, but that gender is not highly personal and that disclosure would not be objectionable to a reasonable person. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18274, May 27, 2012, at 3-4; Ill. Att'y Gen. PAC Req. Rev. Ltr. 18974, issued May 23, 2012, at 4-5. Accordingly, CPD improperly redacted a victim's gender.

Section 7(1)(d)(i) of FOIA

Section 7(1)(d)(i) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request[.]" "The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest." Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 536 (2nd Dist. 1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. See Day v. City of Chicago, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009).

In its response to request, CPD merely stated that the records relate to an ongoing criminal trial involving and that disclosure of the withheld information would jeopardize the fairness of the investigation and trial. Similarly, in its explanation to this office, CPD simply stated that prosecution is ongoing. A public body must set forth facts as to how disclosure would interfere with a law enforcement proceeding in order to properly withhold information pursuant to section 7(1)(d)(i) of FOIA. Accordingly, we conclude that CPD did not meet its burden of demonstrating by clear and convincing evidence that responsive information is exempt from disclosure under section 7(1)(d)(i) of FOIA.
Section 7(1)(d)(iii) of FOIA

Section 7(1)(d)(iii) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing[.]

As with section 7(1)(d)(i) of FOIA, a public body must demonstrate how disclosure of responsive records would create a substantial likelihood of depriving an individual of a fair trial or an impartial hearing. requested records about his own arrest, and CPD did not articulate or provide evidence as to how disclosure of the responsive records would deprive him or any other individual of a fair trial or an impartial hearing. Accordingly, we conclude that the CPD did not meet its burden of demonstrating by clear and convincing evidence that the requested records are exempt from disclosure under section 7(1)(d)(iii) of FOIA.

Section 7(1)(d)(iv) of FOIA

Section 7(1)(d)(iv) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]

This provision allows police departments to protect the anonymity of persons who provide them with information. Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01, 808 N.E.2d 56, 66 (1st Dist. 2004). Records may be withheld in their entireties if disclosure of the contents "would necessarily result in the disclosure of the identity of the source" of the information and, therefore, "redaction of the [records] cannot be meaningfully accomplished." Copley Press, Inc. v. City of Springfield, 266 Ill. App. 3d 421, 426 (4th Dist. 1994).

CPD did not explain to this office what information it withheld pursuant to section 7(1)(d)(iv). This office's review of the arrest report revealed that CPD redacted parts of the incident narrative. Based on our review, CPD did not improperly redact a sentence depicting information provided to CPD by a private citizen upon an officer's arrival. However, CPD did not demonstrate that redacting any other portions of the responsive records (aside from the name
of an alleged victim, as set forth above) is necessary to protect the identity of a witness within the meaning of section 7(1)(d)(iv). In particular, CPD improperly redacted the description of the interaction between [REDACTED] and the officers on the scene. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 26558, issued January 7, 2014, at 3 ("Construing section 7(1)(d)(iv) to apply to individuals who provide information for a[n] * * * investigation pursuant to their duties as public servants would yield [an] absurd result, and statutes should be construed to avoid absurdity.").

Section 7(1)(d)(vi) of FOIA

Section 7(1)(d)(vi) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "endanger the life or physical safety of law enforcement personnel or any other person[]."

Again, a public body must provide information as to how disclosure of responsive records would endanger the life or physical safety of law enforcement personnel or any other person if it wishes to withhold information under a law enforcement exemption such as this one. CPD did not explain how the life or physical safety of law enforcement personnel or any other person would be endangered by disclosure. Accordingly, we conclude that the CPD did not meet its burden of demonstrating by clear and convincing evidence that the requested records are exempt from disclosure under section 7(1)(d)(vi) of FOIA.

Completeness of Response (Re: Felony Complaints)

FOIA requires a public body to conduct a "reasonable search tailored to the nature of a particular request." Campbell v. U.S. Dept of Justice, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body is not required to "search every record system[,]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." Oglesby v. U.S. Dept of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). However, "[a] requester is entitled only to records that an agency has in fact chosen to create and retain." Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

In its response to this office, CPD explained that it does not possess a responsive felony complaint as felony complaints go with an arrestee (i.e. are sent to the State's Attorney's Office) when an arrestee leaves CPD's custody. This office has not received any evidence indicating that CPD is in possession of a responsive felony complaint. Accordingly, we conclude that the CPD did not improperly respond that it did not possess a record responsive to that portion of the request.
In accordance with these conclusions, we request that CPD provide with a supplemental response containing copies of the responsive records, subject only to the redactions identified as permissible above.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Chicago address listed on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,

JOSH JONES
Supervising Attorney
Public Access Bureau